

THE NEW
CIVIL COURT MANUAL,
BEING
THE NINTH EDITION
OF THE
"CIVIL P. CODE AND OTHER ACTS,"

IMPROVED AND ENLARGED.

COMPILED BY

D. E. CRANENBURGH,

PLEADER.

Calcutta:

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PREFACE.

THIS is an improved and enlarged edition of the new Civil Court Manual.

The Civil Procedure Code, which is printed at the end of the work, is annotated with the rulings of the High Courts in India up to 1884, taken principally from the Indian Law Reports.

To each of the longer Acts a separate index has been appended—*namely*, the Indian Succession Act, the Contract Act, the Evidence Act, and the Code of Civil Procedure. As to the Stamp Act, as the instruments chargeable with duty are alphabetically arranged in the form of an index, it was not thought necessary to append a separate index to this Act.

D. E. CRANENBURGH.

June 25, 1885.

THE NEW CIVIL COURT MANUAL.

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5. The Chief Justice of any such High Court shall have rank and precedence before the other Judges of the same High Court. Court, and such of the other Judges of such Court as on its establishment shall have been transferred thereto from the Supreme Court shall have rank and precedence before the Judges of the High Court not transferred from the Supreme Court, and, except as aforesaid, all the Judges of each High Court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their Patents.

6. Any Chief Justice or Judge transferred to any High Court from the Salaries, &c., of Judges of Supreme Court shall receive the like salary and High Court. be entitled to the like retiring pension and advantage as he would have been entitled to for and in respect of service in the Supreme Court, if such Court had been continued, his service in the High Court being reckoned as service in the Supreme Court; and, except as aforesaid, it shall be lawful for the Secretary of State in Council of India to fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the Chief Justices and Judges of the several High Courts under this Act, and from time to time to alter the same: Provided always that such alteration shall not affect the salary of any Judge appointed prior to the date thereof.

7. Upon the happening of a vacancy in the office of Chief Justice, and Provision for vacancy of the office of Chief Justice or other Judge during any absence of a Chief Justice, the Governor-General in Council or Governor in Council, as the case may be, shall appoint one of the Judges of the same High Court to perform the duties of Chief Justice of the said Court until some person has been appointed by Her Majesty to the office of Chief Justice of the same Court, and has entered on the discharge of the duties of such office, or until the Chief Justice has returned from such absence; and upon the happening of a vacancy in the office of any other Judge of any such High Court, and during any absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice, it shall be lawful for the Governor-General in Council, or Governor in Council, as the case may be, to appoint a person, with such qualifications as are required in persons to be appointed to the High Court to act as a Judge of the said High Court, and the person so appointed shall be authorized to sit and to perform the duties of a Judge of the said Court until some person has been appointed by Her Majesty to the office of Judge of the same Court, and has entered on the discharge of the duties of such office, or until the absent Judge has returned from such absence, or until the Governor-General in Council or Governor in Council, as aforesaid, shall see cause to cancel the appointment of such acting Judge.

8. Upon the establishment of such High Court as aforesaid in the Abolition of Supreme Courts and Sadr Courts. Presidency of Fort William in Bengal, the Supreme Court and the Court of Sadr Diwāni Adalat and Sadr Nizāmat Adalat at Calcutta in the same Presidency shall be abolished.

And upon the establishment of such High Court in the Presidency of Madras, the Supreme Court and the Court of Sadr Adalat and Faujdari Adalat in the same Presidency shall be abolished.

And upon the establishment of such High Court in the Presidency of Bombay, the Supreme Court and the Court of Sadr Diwāni Adalat and Sadr Faujdari Adalat in the same Presidency shall be abolished.

And the records and documents of the several Courts so abolished in each Presidency shall become and be records and documents of the High Court established in the same Presidency.

9. Each of the High Courts to be established under this Act shall have

Jurisdiction and powers of and exercise all such civil, criminal, admiralty and High Courts. vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the Presidency for which it is established, as Her Majesty may, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of Original Civil and Criminal Jurisdiction beyond the limits of the Presidency-town as may be prescribed thereby; and, save as by such Letters Patent as may be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last-mentioned Courts.

10.—[Repealed by 28 Vic., c. 15 s. 2.]

11. Upon the establishment of the said High Courts in the said Presi-

Existing provisions applica- dencies respectively, all provisions then in force in ble to Supreme Courts to apply India of Acts of Parliament, or of any Orders of to High Courts. Her Majesty in Council, or Charters, or of any Acts of the Legislature of India, which at the time or respective times of the establishment of such High Courts are respectively applicable to the Supreme Courts^a at Fort William in Bengal, Madras, and Bombay respectively, or to the Judges of those Courts, shall be taken to be applicable to the said High Courts and to the Judges thereof respectively, so far as may be consistent with the provisions of this Act and the Letters Patent to be issued in pursuance thereof, and subject to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council.

12. From and after the abolition of the Courts abolished as aforesaid in

Provision as to pending pro- any of the said Presidencies, the High Court of ceedings in abolished Courts. the same Presidency shall have jurisdiction over all proceedings pending in such abolished Courts at the time of the abolition thereof, and such proceedings and all previous proceedings, in the said last-mentioned Courts shall be dealt with as if the same had been had in the said High Court, save that any such proceedings may be continued as nearly as circumstances permit, under and according to the practice of the abolished Courts respectively.

13. Subject to any laws or regulations which may be made by the

Power to High Courts to Governor-General in Council, the High Court provide for exercise of juris- established in any Presidency under this Act may, diction by single Judges or by its own rules, provide for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges of the said High Court, of the original and appellate jurisdiction vested in such Court in such manner as may appear to such Court to be convenient for the due administration of justice.

14. The Chief Justice of each High Court shall, from time to time,

Chief Justice to determine determine what Judge in each case shall sit alone, what Judges shall sit alone and what Judges of the Court, whether with or or in the Division Courts without the Chief Justice, shall constitute the several Division Courts as aforesaid.

^a See per Peacock, C.J., 2 Beng. Fall Bench Rulings, 26, 27.

15. Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its appellate jurisdiction, and shall have power to call for returns and to direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction, and shall have power to make and issue general rules for regulating the practice and proceedings of such Courts, and also to prescribe forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and also to settle tables of fees to be allowed to the Sheriff, Attorneys, and all Clerks and Officers of Courts, and from time to time to alter any such rule or form or table; and the rules so made, and the forms so framed, and the tables so settled, shall be used and observed in the said Courts: Provided that such general rules and forms and tables be not inconsistent with the provisions of any law in force, and shall, before they are issued, have received the sanction, in the Presidency of Fort William, of the Governor-General in Council, and, in Madras or Bombay, of the Governor in Council of the respective Presidencies.

16. It shall be lawful for Her Majesty, if at any time hereafter Her Majesty see fit so to do, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature in and for any portion of the territories within Her Majesty's dominions in India not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and of such number of other Judges with such qualifications as are required in persons to be appointed to the High Courts established at the Presidencies hereinbefore mentioned, as Her Majesty, from time to time, may think fit to appoint, and it shall be lawful for Her Majesty, by such Letters Patent, to confer on such Court any such jurisdiction, powers, and authority as under this Act is authorized to be conferred on, or will become vested in, the High Court to be established in any Presidency hereinbefore mentioned; and subject to the directions of such Letters Patent, all the provisions of this Act, having reference to the High Court established in any such Presidency, and to the Chief Justice and other Judges of such Court, and to the Governor-General or Governor of the Presidency in which such High Court is established, shall, as far as circumstances may permit, be applicable to the High Court established in the said territories, and to the Chief Justice and other Judges thereof, and to the person administering the government of the said territories.

17. It shall be lawful for Her Majesty, if Her Majesty shall so think fit, at any time within three years after the establishment of any High Court under this Act, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty may think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty may think fit, and as might have been granted or made by such first Letters Patent, or without any such revocation as aforesaid, by like Letters Patent, to grant and make any additional or supplementary powers and provisions which might have been granted or made in the first instance.

18.—[Repealed by 28 Vic., c. 15, s. 2.]

19. The word "Barrister" in this Act shall be deemed to include Barristers of England or Ireland or Members of the Faculty of Advocates in Scotland; and the words "Governor-General" and "Governor" shall comprehend the officer administering the government.

LETTERS PATENT FOR THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Bearing date the 28th December 1865.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to all to whom these presents shall come, greeting:
Recital of Acts.
Whereas, by an Act of Parliament, passed in the twenty-fourth and twenty-fifth years of Our reign, intituled "An Act for establishing High Courts of Judicature in India," it was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and that such High Court consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always that the persons who, at the time of the establishment of such High Court, were Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sadr Diwání Adálat or Sadr Adálat of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that, upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sadr Diwání Adálat and Sadr Nizámat Adálat at Calcutta, in the said Presidency, should be abolished:

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the Presidency-town as might be prescribed thereby; and, save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts:

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the fourteenth day of May, in the twenty-fifth year of Our reign, in the year of Our Lord one thousand eight hundred and sixty-two, did accordingly, for Us, Our heirs and successors, erect and establish, at Fort

William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record; and whereas We did thereby appoint and ordain that the said High Court of Judicature at Fort William in Bengal should, until further or other provision should be made by Us or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and thirteen Judges, and did thereby, in addition to the persons who, at the time of the establishment of the said High Court, were Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sadr Diwāni Adālat in the said Presidency respectively, constitute and appoint certain other persons, being respectively qualified, as in the said Act is declared, to be Judges of the said High Court:

And whereas on the thirtieth day of January, one thousand eight hundred and sixty-three, We did, in the manner in the said recited Act, provide, direct, and ordain that the said High Court should consist of a Chief Justice and fourteen Judges:

And whereas by the said recited Act it is declared lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent:

And whereas by the Act of the twenty-eighth of Our reign, chapter fifteen, entitled "An Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the Territorial Jurisdiction of the said Courts," the time for issuing fresh Letters Patent has been extended to the first of January, one thousand eight hundred and sixty-six;

And whereas, in order to make further provision respecting the constitution of the said High Court, and the administration of justice thereby, it is expedient that the said Letters Patent, dated the fourteenth of May, one thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent:

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to revoke, and do by these presents (from and after the date of the publication thereof, as hereinafter provided, and subject to the provisions thereof), revoke Our said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty-two, except so far as the Letters Patent of the fourteenth year of His Majesty King George the Third, dated the twenty-sixth of March, one thousand seven hundred and seventy-four, establishing a Supreme Court of Judicature at Fort William in Bengal, were revoked or determined thereby.

2. And We do by these presents grant, direct, and ordain that, notwithstanding the revocation of the said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty-two, the High Court of Judicature, called the High Court of Judicature at Fort William in Bengal, shall be and continue, as from the time of the original erection and establishment thereof, the High

Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force, except so far as the same are altered hereby, until the same are altered by competent authority.

3. And We do hereby appoint and ordain that the person and persons Judges of the said High Court to be continued. who shall, immediately before the date of the publication of these Letters Patent, be the Chief Justice and Judges, or acting Chief Justice or Judges, if any, of the said High Court of Judicature at Fort William in Bengal, shall continue to be the Chief Justice and Judges, or acting Chief Justice or Judges, of the said High Court, until further or other provisions shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India.

4. And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at Fort William in Bengal, appointed by virtue of the said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed, until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations, and provisions as if he were appointed by virtue of these Letters Patent.

5. And We do hereby ordain that the Chief Justice and every Judge who shall be, from time to time, appointed to the said High Court of Judicature at Fort William in Bengal, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor-General in Council may commission to receive it:—

“I, A. B., appointed Chief Justice [or a Judge] of the High Court of Judicature at Fort William in Bengal, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment.”

6. And We do hereby grant, ordain, and appoint that the said High Court of Judicature at Fort William in Bengal shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, with an exergue or label surrounding the same, with this inscription, “The Seal of the High Court at Fort William in Bengal.” And We do further grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the said recited Act; and We do further grant, ordain, and appoint that whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

7. And We do hereby further grant, ordain, and appoint that all writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature at Fort William in Bengal, shall run and be in the name and style of Us or Our heirs and successors, and shall be sealed with the seal of the said High Court.

8. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature at Fort William in Bengal from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor-General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor-General in Council, and shall be either confirmed or disallowed by the Governor-General in Council; and it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Governor-General in Council shall approve of: Provided always, and it is Our will and pleasure that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor-General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

9. And We do hereby authorize and empower the said High Court of Judicature at Fort William in Bengal to approve, admit, and enrol such and so many Advocates, Vakils, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakils, and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may, by its rules and directions, determine, and subject to such rules and directions.

10. And We do hereby ordain that the said High Court of Judicature at Fort William in Bengal shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakils, and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils, or Attorneys-at-law; and no person whatsoever, but such Advocates, Vakils, or Attorneys, shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear plead, or act on his own behalf, or on behalf of a co-suitor.

As to Civil Jurisdiction.

11. And We do hereby ordain that the said High Court of Judicature at Fort William in Bengal shall have and exercise original civil jurisdiction within such local

Local limits of ordinary original jurisdiction.

limits as may, from time to time, be declared and prescribed by any law made by competent legislative authority for India, and until some local limits shall be so declared and prescribed within the limits declared and prescribed by the proclamation fixing the limits of Calcutta, issued by the Governor-General in Council on the tenth day of September in the year of our Lord one thousand seven hundred and ninety-four, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

12. And We do further ordain that the said High Court of Judicature Original jurisdiction as to at Fort William in Bengal, in the exercise of its suits. ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immoveable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant, at the time of the commencement of the suit, shall dwell, or carry on business, or personally work for gain, within such limits: except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees.

13. And We do further ordain that the said High Court of Judicature Extraordinary original jurisdiction. at Fort William in Bengal shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Bengal Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

14. And We do further ordain that where plaintiff has several causes of action. As to joinder of causes of action against defendant, such causes of action not being for land or other immoveable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit.

15. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal from the judgment (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court, or of one Judge of any Division Court, pursuant to section 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgment (not being a sentence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors, in Our or their Privy Council as hereinafter provided.

16. And We do further ordain that the said High Court of Judicature Appeal from Courts in at Fort William in Bengal shall be a Court of Appeal from the Civil Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

17. And We do further ordain that the said High Court of Judicature Jurisdiction as to infants at Fort William in Bengal shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the Bengal Division of the Presidency of Fort William, as that which was vested in the said High Court immediately before the publication of these presents.

18. And We do further ordain that the Court for relief of insolvent Provision with respect to debtors at Calcutta shall be held before one of the Judges of the said High Court of Judicature at Fort William in Bengal, and the said High Court, and any such Judge thereof, shall have and exercise, within the Bengal Division of the Presidency of Fort William, such powers and authorities with respect to original and appellate jurisdiction, and otherwise, as are constituted by the laws relating to insolvent debtors in India.

19. And We do further ordain that, with respect to the law or equity In the exercise of ordinary to be applied to each case coming before the said original civil jurisdiction High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

20. And We do further ordain that, with respect to the law or equity In the exercise of extra- and rule of good conscience to be applied to each ordinary original civil jurisdiction cause coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

21. And We do further ordain that, with respect to the law or equity In the exercise of appellate and rule of good conscience to be applied by the late jurisdiction said High Court of Judicature at Fort William in Bengal to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceeding in such case were originally instituted ought to have applied to such case.

22. And We do further ordain that the said High Court of Judicature Ordinary original jurisdiction at Fort William in Bengal shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction; and also in respect of all such persons both within the limits of the Bengal Division at the Presidency of Fort William and beyond such limits, and not within the limits of the criminal jurisdiction of any other High Court or Courts established by competent legislative authority for India, as the said High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction over at the date of the publication of these presents.

23. And We do further ordain that the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

24. And We do further ordain that the said High Court of Judicature Extraordinary original jurisdiction. at Fort William in Bengal shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such person brought before it on charges preferred by the Advocate-General, or by any Magistrate or other Officer specially empowered by the Government in that behalf.

25. And We do further ordain that there shall be no appeal to the said High Court of Judicature at Fort William in Bengal from any sentence or order passed or made in any criminal trial before the Court of original jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

26. And We do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that in his judgment there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

27. And We do further ordain that the said High Court of Judicature Appeals from Courts in at Fort William in Bengal shall be a Court of Provinces. appeal from the Criminal Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

28. And We do further ordain that the said High Court of Judicature As to referred cases and at Fort William in Bengal shall be a Court of revision of trials. reference and revision from the Criminal Court subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other Officers now authorized to refer cases to the said High Court, and to revise all such cases tried by any Officer or Court possessing criminal jurisdiction, as are now subject to reference to, or revision by, the said High Court.

29. And We do further ordain that the said High Court shall have As to transfer of a case power to direct the transfer of any criminal case from one Court to another. or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any Officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other Officer or Court.

Criminal Law under which Punishments to be inflicted.

30. And We do further ordain that all persons brought for trial before the said High Court of Judicature at Fort William in Bengal, either in the exercise of its original jurisdiction, or in the exercise of jurisdiction as a Court of appeal, reference, or revision, charged with any offence for which provision is made by Act No. XLV. of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Exercise of Jurisdiction on Circuit or Special Commission.

31. And We do further ordain that whenever it shall appear to the Governor-General in Council convenient that the Judges may sit in other places by way of circuit or special commission. jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court of Judicature at Fort William in Bengal, should be exercised in any place within the jurisdiction of any Court, now subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceeding in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Admiralty and Vice-Admiralty Jurisdiction.

32. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of admiralty or of vice-admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as may now be exercised by the said High Court.

33. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have and exercise all such criminal jurisdiction as may now be exercised by the said High Court as a Court of admiralty or vice-admiralty, or otherwise in connection with maritime matters or matters of prize.

Testamentary and Intestate Jurisdiction.

34. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority as that which may now be lawfully exercised by the said High Court [except within the limits of the jurisdiction for that purpose of any other High Court established by Her Majesty's Letters Patent] in relation to the granting of probates of last wills and testaments, and letters of administration of the goods; chattels, credits, and all other effects whatsoever of persons dying intestate, whether within or without the said Bengal Division subject to the orders of the Governor-General in Council as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established: Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

35. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have jurisdiction, within the Bengal Division of the Presidency of Fort William, in matters matrimonial between Our subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof.

Powers of single Judges and Division Courts.

36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Fort William in Bengal in the exercise of its original or appellate jurisdiction may be performed by any Judge, or by any Division Court thereof appointed or constituted for such purpose, under the provisions of the thirteenth section of the aforesaid Act of the twenty-fourth and twenty-fifth years of Our reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail.

Regulation of Civil Proceedings.

37. And We do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, from time to time, to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its admiralty, vice-admiralty, testamentary, intestate, and matrimonial jurisdictions respectively: Provided always that the said High Court shall be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being Act No. VIII. of 1859, and the provisions of any law which has been made, amending or altering the same, by competent legislative authority for India.

Regulation of Criminal Proceedings.

38. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Fort William in Bengal in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal causes shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV. of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

As to Privy Council Appeals.

39. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order

of the said High Court of Judicature at Fort William in Bengal made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by a majority of the full number of Judges of the said High Court, or of any Division Court from which an appeal shall not lie to the said High Court under the provision contained in the 15th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council: subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency, except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

40. And We do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, at its discretion, on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences.

41. And We do further ordain that from any judgment, order, or sentence of the High Court of Judicature at Fort William in Bengal, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs or successors in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

42. And We do further ordain that in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature at Fort William in Bengal to Us, Our heirs or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court; and that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of

appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Powers of Government to call for Records, &c.,

43. And it is Our further will and pleasure that the said High Court of Judicature at Fort William in Bengal shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

Powers of Indian Legislature preserved.

44. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor-General in cases of emergency under the provisions of an Act of the twenty-fourth and twenty-fifth years of Our reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

As to Provisions of former Letters Patent.

45. And it is Our further will and pleasure that these Letters Patent shall be published by the Governor-General in Council, and shall come into operation from and after the date on which effect shall have been given to them; so much of the aforesaid Letters Patent granted by His Majesty King George the Third as was not revoked or determined by the said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty-two, and is inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.

In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster, the twenty-eighth day of December in the twenty-ninth year of Our reign.

(Signed) C. ROMILLY.

LETTERS PATENT FOR THE ESTABLISHMENT OF A HIGH COURT IN THE N. W. PROVINCES OF THE BENGAL PRESIDENCY.

Dated March 17, 1866.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to all
Recital of Acts. to whom these presents shall come, greeting. Where-

as, by an Act of Parliament, passed in the twenty-fourth and twenty-fifth years of Our reign, intituled "An Act for establishing High Courts of Judicature in India," it was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always that the persons who, at the time of

the establishment of such High Court, were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sadr Diwání Adálat or Sadr Adálat of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that, upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sadr Diwání Adálat and Sadr Nizámat Adálat at Calcutta, in the said Presidency, should be abolished :

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations, as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the Presidency-towns, as might be prescribed thereby ; and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Court :

And whereas it is further declared by the said recited Act that it shall be lawful for Us by Letters Patent to erect and establish a High Court of Judicature in and for any portion of the territories within Her Majesty's Dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be appointed to the High Courts established at the said Presidencies, as we from time to time might think fit to appoint ; and that, subject to the directions of the Letters Patent, all the provisions of the said recited Act relative to High Courts and to the Chief Justice and other Judges of such Courts and to the Governor-General, or Governor of the Presidency in which such High Courts were established, shall, as far as circumstances may permit, be applicable to any new High Court which may be established in the said territories, and to the Chief Justice and other Judges thereof, and to the persons administering the Government of the said territories :

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the fourteenth day of May, in the twenty-fifth year of Our reign, in the year of our Lord one thousand eight hundred and sixty-two, did accordingly, for Us, Our heirs and successors, erect and establish, at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record :

1. Now know ye that We, upon full consideration of the premises, and Establishment of High of Our special grace, certain knowledge, and mere Court. motion, have thought fit to erect and establish, and by these presents We do accordingly, for Us, Our heirs and successors, erect and establish, for the North-Western Provinces of the Presidency of Fort William aforesaid, a High Court of Judicature, which shall be called the High Court of Judicature for the North-Western Provinces, and We do hereby constitute the said Court to be a Court of Record.

2. And We do hereby appoint and ordain that the said High Court of Judicature for the North-Western Provinces shall, until further or other provision shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act, consist of a Chief Justice and five Judges, the first Chief Justice being Walter Morgan, Esquire, and the five Judges being Alexander Ross, Esquire, William Edwards, Esquire, William Roberts, Esquire, Francis Boyle Pearson, Esquire, and Charles Arthur Turner, Esquire, being respectively qualified as in the said Act is declared.

3. And We do hereby ordain that the Chief Justice and every Judge of the said High Court of Judicature for the North-Western Provinces, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor-General in Council may commission to receive it:—

“I, A. B., appointed Chief Justice [or a Judge] of the High Court of Judicature for the North-Western Provinces, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment.”

4. And We do hereby grant, ordain, and appoint that the said High Court shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription, “The Seal of the High Court for the North-Western Provinces.” And We do further grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the said recited Act; and We do further grant, ordain, and appoint that whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

5. And We do hereby further grant, ordain, and appoint that all writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature for the North-Western Provinces, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

6. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature for the North-Western Provinces from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor-General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Lieutenant-Governor of the North-Western Provinces, and shall be either confirmed or disallowed by the said Lieutenant-Governor. And it is Our further will and pleasure, and We do hereby, for

Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor of the North-Western Provinces, subject to the control of the Governor-General in Council, shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor-General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

As to Admission of Advocates, Vakils, Attorneys.

7. And We do hereby authorize and empower the said High Court of Judicature for the North-Western Provinces to approve, admit, and enrol such and so many Advocates, Vakils, and Attorneys as to the said High Court shall seem meet, and such Advocates, Vakils, and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may, by its rules and directions, determine, and subject to such rules and directions.

8. And We do hereby ordain that the said High Court of Judicature for the North-Western Provinces shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakils, and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils, or Attorneys-at-law; and no person whatever, but such Advocates, Vakils, or Attorneys, shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-sutor.

Civil Jurisdiction.

9. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reason for so doing being recorded on the proceedings of the said High Court.

10. And We do further ordain that an appeal shall lie to the said High Court of Judicature for the North-Western Provinces from the judgment (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court or of one Judge of any Division Court, pursuant to section 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgment (not being a sentence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being, but that the right of

Extraordinary original jurisdiction

Appeal may lie from the Courts of original jurisdiction to High Court in its appellate jurisdiction.

appeal from other judgments of Judges of the said High Court or of such Division Court in such case shall be to Us, Our heirs or successors, in Our or their Privy Council, as hereinafter provided.

11. And We do further ordain that the said High Court of Judicature As to appeal from Courts for the North-Western Provinces shall be a Court in the Provinces. of appeal from the Civil Courts of the North-Western Provinces, and from all other Courts to which there is now an appeal to the Sadr Diwani Adalat, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

12. And We do further ordain that the said High Court of Judicature As to infants and lunatics for the North-Western Provinces shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the North-Western Provinces, as that which is exercised in the Bengal Division of the Presidency of Fort William by the High Court of Judicature at Fort William in Bengal, but subject to the provisions of any laws or regulations now in force.

Law to be administered.

13. And We do further ordain that, with respect to the law or equity By High Court in the exercise of extraordinary original civil jurisdiction to be applied to each case coming before the said High Court of Judicature for the North-Western Provinces, in the exercise of its extraordinary original civil jurisdiction, such law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein.

14. And We do further ordain that, with respect to the law or equity By High Court in the exercise of appellate jurisdiction. and rule of good conscience to be applied by the said High Court of Judicature for the North-Western Provinces, to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction.

15. And We do further ordain that the said High Court of Judicature Ordinary original jurisdiction. for the North-Western Provinces shall have ordinary original criminal jurisdiction in respect of all such persons within the said Provinces as the High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction over at the date of the publication of these presents; and the criminal jurisdiction of the said last-mentioned High Court over such persons shall cease at such date: Provided, nevertheless, that criminal proceedings which shall, at such date, have been commenced in the said last-mentioned High Court, shall continue as if these presents had not been issued.

16. And We do further ordain that the said High Court of Judicature Jurisdiction as to persons. for the North-Western Provinces, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

17. And We do further ordain that the said High Court of Judicature

Extraordinary original jurisdiction. for the North-Western Provinces shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the Sadr Nizamat Adalat, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other Officer specially empowered by the Government in that behalf.

18. And We do further ordain that there shall be no appeal to

No appeal from Court exercising original jurisdiction. the said High Court from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19. And We do further ordain that, on such point or points of law

As to review of cases on being so reserved as aforesaid, the said High Court points of law reserved. shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

20. And We do further ordain that the said High Court of Judicature

As to appeals from Courts for the North-Western Provinces shall be a Court in the Provinces. of appeal from the Criminal Courts of the said Provinces, and from all other Courts from which there is now an appeal to the Court of Sadr Nizamat Adalat for the said Provinces, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said Court of Sadr Adalat by virtue of any law now in force.

21. And We do further ordain that the said High Court shall be a

As to hearing of referred Court of reference and revision from the Criminal cases, &c. Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other Officers now authorized to refer cases to the Court of Sadr Nizamat Adalat of the North-Western Provinces, and to revise all such cases tried by any Officer or Court possessing criminal jurisdiction as are now subject to reference to, or revision by, the said Court of Sadr Nizamat Adalat.

22. And We do further ordain that the said High Court shall have

As to the transfer of a case power to direct the transfer of any criminal case from one Court to another. or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any Officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of such other Officer or Court.

Act under which Punishments to be inflicted.

23 And We do further ordain that all persons brought for trial before

Indian Penal Code. the said High Court of Judicature for the North-Western Provinces, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference, or revision, charged with any offence for which provision is made

by Act No. XLV. of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Exercise of Jurisdiction elsewhere in other places by way of Circuit or Special Commission.

24. And We do further ordain that, whenever it shall appear to the Lieutenant-Governor of the North-Western Provinces, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power, by these Our Letters Patent, or by the recited Act, vested in the said High Court, should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the Sadr Diwāni Adālat or the Sadr Nizāmat Adālat of the North-Western Provinces other than the usual place of sitting of the said High Court, or at several such places, by way of circuit, the proceedings in cases before the said High Court, at such place or places, shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Testamentary and Intestate Jurisdiction.

25. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have the like power and authority as that which is now lawfully exercised within the said Provinces by the said High Court of Judicature at Fort William in Bengal, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate; and that the jurisdiction of the said last-mentioned High Court in relation thereto shall cease from the date of the publication of these presents: Provided always that any proceedings already commenced in relation to any of the matters aforesaid in the said last-mentioned High Court shall continue as if these presents had not been issued: Provided also that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

26. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have jurisdiction, within the said Provinces, in matters matrimonial between Our subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Provinces lawfully possessed thereof.

As to Powers of single Judges and Division Courts.

27. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature for the North-Western Provinces, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof appointed or constituted for such purpose, under the provisions of the thirteenth section of the aforesaid Act of the twenty-fourth and twenty-fifth years of Our reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall

be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail.

Regulation of Civil Proceedings.

28. And We do further ordain that it shall be lawful for the said High Court of Judicature for the North-Western Provinces, from time to time, to make rules and orders for the purpose of adapting, as far as possible, the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being Act No VIII. of 1859, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate, and matrimonial jurisdictions respectively.

Regulations of Criminal Proceedings.

29. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court, in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature for Fort William in Bengal immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV. of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid,

As to Appeals to the Privy Council.

30. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature for the North-Western Provinces, made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court from which an appeal shall not lie to the said High Court under the provisions contained in the 10th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council: subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Provinces, except so far as the said existing rules and others respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

31. And We do further ordain that it shall be lawful for the said High Court of Judicature for the North-Western Provinces, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, From interlocutory judgments.

upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences.

32. And We do further ordain that from any judgment, order, or sentence of the said High Court of Judicature for the North-Western Provinces, made in the exercise of original criminal jurisdiction, or any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs and successors, in Council: Provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as to the High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereinafter make in that behalf.

33. And We do further ordain that, in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature for the North-Western Provinces, to Us, Our heirs or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court; and that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Power of Government to call for Records, &c.

34. And it is Our further will and pleasure that the said High Court of Judicature for the North-Western Provinces shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

Powers of Indian Legislature preserved.

35. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor-General in cases of emergency under the provisions of an Act of the twenty-fourth and twenty-fifth years of Our reign, chapter sixty-seven, and may be in all respects amended and altered thereby. In witness whereof, We have caused these

Our Letters to be made Patent. Witness Ourselves at Westminster, the seventeenth day of March, in the twenty-ninth year of Our reign.

By warrant under the Queen's Sign Manual,

(Signed) C. ROMILLY.

LETTERS PATENT FOR THE ESTABLISHMENT OF HIGH COURTS AT MADRAS AND BOMBAY.

With reference to the new Letters Patent for the High Courts at Madras and Bombay, Mr. Broughton has the following :—

"The new Letters Patent for the High Court at Madras are of the same date, and similar in all respects to that for the High Court at Fort William, *mutatis mutandis*. The preamble states that the Court consists of a Chief Justice and five Judges, as provided in the former Charter, and that that number is continued. By section 11 the local limits of the ordinary original civil jurisdiction of the Court are to be such 'as may, from time to time, be declared and prescribed by any law made by the Governor in Council, and until some local limits shall be so declared and prescribed within the limits of the local jurisdiction of the said High Court at Madras, at the date of the publication of these presents,' &c. Section 22 gives the High Court ordinary original criminal jurisdiction, within the local limits of its ordinary original civil jurisdiction, and also in respect of all such persons beyond such limits over whom the said High Court of Judicature at Madras shall have criminal jurisdiction at the date of the publication of these presents. Section 34 is as follows : 'And We do further ordain that the said High Court of Judicature at Madras shall have the like power and authority as that which may now be lawfully exercised by the said High Court in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate, whether within or without the Presidency of Madras : Provided,' &c. (as in the Bengal Letters Patent). In other respects, the Letters Patent are the same, having reference to the remarks made in regard to the former Letters Patent for the Court at Madras."

"The new Letters Patent for the High Court at Bombay are of the same date. The preamble states that the Court consisted of the Chief Justice and six Judges, as provided in the former Charter, and that that number was increased to seven on the 6th July, 1863, which number is continued. By section 11 the local limits of the ordinary original civil jurisdiction of the Court are to be such 'as may, from time to time, be declared and prescribed by any law made by the Governor in Council, and until some local limits shall be so declared and prescribed within the limits of the local jurisdiction of the said High Court at Bombay, at the date of the publication of these presents,' &c. Section 22 gives the High Court ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, 'and also in respect of all such persons beyond such limits over whom the said High Court of Judicature at Bombay shall have criminal jurisdiction at the date of the publication of these presents' Section 34 is the same as section 34 of the Madras Letters Patent. In other respects, the Letters Patent are the same, *mutatis mutandis*, as those of the other Presidencies."

CURATORS IN CASES OF SUCCESSIONS.

ACT NO. XIX. OF 1841.

PASSED ON THE 6TH OF SEPTEMBER 1841.

An Act for the protection of moveable and immoveable property against wrongful possession in cases of successions.

1. WHEREAS much inconvenience has been experienced where persons have died possessed of moveable and immoveable property, and the same has been taken upon pretended claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property, and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud in order to obtain possession; and whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit; and whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession, will be too tardy a remedy for obviating them all, especially as regards moveable property; and whereas it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste, or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case; and whereas it will be very convenient to interfere with successions to estates by the appointment of curators or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit:—

It is hereby enacted that, whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

2. It shall be lawful for any agent, relative, or near friend, or for the Agent, &c., may apply in Court of Wards in cases within their cognizance, in the event of any minor, disqualified, or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

3. The Judge to whom such application shall be made shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and documents at his

Inquiry made by Judge.

discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bonâ fide*.

4. In case the Judge shall be satisfied of the existence of such strong

Procedure.

or disturbed possession by publication, and, after the expiration of a reasonable

Determination of right.

tioned), and shall deliver possession accordingly—provided always that the

Appointment of officer to secure effects.

otherwise secure the same upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

5. In case it shall further appear upon such application and examination

Appointment of curator as aforesaid that danger is to be apprehended of pending determination of suit the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession, or the insufficiency thereof, is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof. Provided always that, in the case of land the Judge may delegate to the Collector or to his officer the powers of a curator, and also that every appointment of a curator in respect of any property be duly published.

6. The Judge shall have power to authorize such curator, either to take

Bowers conferable on curator.

inventories of the property shall have been made, or for any other purpose

Discretion to allow party in possession to continue.

provided always that it shall be entirely discretionary with the Judge whether he shall allow the party in possession to continue in such possession on giving security, or not; and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

7 The Judge shall exact from the curator security for the faithful dis-

Curator to give security and may receive remuneration.

such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property and on the annual profits of the real property. All surplus moneys realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit. Provided always that although security shall be

Disposal of surplus.

required from the curator with all reasonable despatch, and where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

Curator may be invested with powers before security is taken

cable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

8. Where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same.

Report from Collector where estate includes revenue-paying land.

In cases of urgency the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto, but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sadr Diwani Adalat, and the Court of Sadr Diwani Adalat, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

9. The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate. Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof

Institution and defence of suits Authority for collection of dues

institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate. Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof

10. Pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a *prima-facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

Allowances to apparent owners pending custody by curator.

ful for the Judge to make such allowances to parties having a *prima-facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

11. The curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and, upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

Accounts to be filed by curator.

period of every three months, if his administration last so long, and, upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

12. The accounts of any such curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator. And if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

Inspection of accounts, and right of interested party to keep duplicate.

to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator. And if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

Penalty for default as to accounts.

that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

13. After the Judge of any district shall have appointed any curator, such appointment shall preclude the Judge of any other district within the same Presidency from appointing any other curator, provided the first

Bar to appointment of second curator for same property.

such appointment shall preclude the Judge of any other district within the same Presidency from appointing any other curator, provided the first

appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the

deceased, this shall not preclude the appointment of different parts of property within the same Presidency of another curator in

respect of the residue or any portion thereof; provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge—and provided further that, if two or more curators be

appointed by different Judges for several parts of an estate, it shall be lawful for the Sadr Diwani

Adalat to make such order as it shall think fit for the appointment of one curator of the whole property.

14. This Act shall not be put in force unless the aforesaid application to the Judge be made within six months of the limitation of time for application for curator. decease of the proprietor, whose property is claimed by right in succession.

15. This Act shall not be put in force to contravene any public act of settlement; neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions; but, in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

16. This Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards of any Presidency, and in case a minor, or other disqualified person whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession, and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate pending the suit without taking such security as aforesaid, and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

17. Nothing in this Act contained shall be any impediment to the bringing of a regular suit either by the party whose saving of right to bring regular suit. application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession, under this Act.

18. The decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the effect of decision on summary suit. actual possession; but for this purpose it shall be final, not subject to any appeal or order review.

19. It shall be lawful for the Governments of the respective Presidencies to appoint public curators for any district or number of districts. And the Judge having jurisdiction shall nominate such public curator or curators in all cases where the choice of a curator is left discretionary with him under the preceding provisions of this Act.

ESTATES OF LUNATICS.

ACT NO. XXXV. OF 1858.

RECEIVED THE G.-G.'s ASSENT ON THE 14TH SEPTEMBER 1858.

*An Act to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature.**

WHEREAS it is expedient to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature; and to prescribe general rules by which the state of mind of persons not subject to such jurisdiction, who are alleged to be lunatic, may be enquired into and ascertained; It is enacted as follows:—

1.—[*Repealed by Act XIV. of 1870.*]

2. Whenever any person not subject to the jurisdiction of the Supreme Courts, who is possessed of property, is alleged to be a lunatic, the Civil Court within whose jurisdiction such person is residing† may, upon such application as is hereinafter mentioned, institute an enquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

3. Application for such enquiry‡ may be made by any relative of the alleged lunatic, or by any public curator appointed under Act XIX. of 1841, or by the Government Pleader, or, if the property of the alleged lunatic consist in whole or in part of land or any interest in land, by the Collector of the district in which it is situate. If the property, or any part thereof, be of such a description as by the law in force in any Presidency where such property is situate would subject the proprietor, if disqualified, to the superintendence of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

4. When the Civil Court is about to institute any such enquiry as aforesaid, it shall cause notice to be given to the alleged lunatic of the time and place at which it is proposed to hold the enquiry. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it shall think proper. The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic.

5. The Civil Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity

* Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874.

† 2 Beng., A. C. J., 246

‡ The application must be verified.—7 Suth. W. R., C. R., 267.

and condition of such alleged lunatic.* The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

6. The attendance and examination of the alleged lunatic under the provisions of the last preceding section shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

7. The Civil Court, if it think fit, may appoint two or more persons to act as assessors to the Court in the said enquiry. Upon the completion of the enquiry, the Court shall determine whether the alleged lunatic is or is not of unsound mind, and may make such order as to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic, if he be adjudged to be of unsound mind, or otherwise, as it may think proper.

8. If the alleged lunatic reside at a distance of more than fifty miles from the place where the Civil Court to which the application shall have been made is held, the said Court may issue a commission to any subordinate Court to make the enquiry, and thereupon the said subordinate Court shall conduct the enquiry in the manner hereinbefore provided. On the completion of the enquiry, the subordinate Court shall report its proceedings, with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and thereupon the Civil Court shall make such order in the case as it may think proper.†

9. When a person has been adjudged to be of unsound mind and incapable of managing his affairs, if the estate of such person or any part thereof consist of property which by the law in force in any Presidency subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorized to take charge of the same. In all other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a manager of the estate. Any near relative of the lunatic or the public curator, or, if there be no public curator, any other suitable person, may be appointed manager.‡

10. Whenever a manager of the estate of a lunatic is appointed by the Civil Court, the Court shall appoint a fit person to be guardian of the person of the lunatic. The manager, unless he be the public curator, may be appointed guardian: Provided always that the legal heir of the lunatic shall not, in any case, be appointed guardian of his person.

11. If the estate consist in whole or in part of land or any interest in land not subject to the jurisdiction of the Court of Wards, the Civil Court, instead of appointing a manager, may direct the Collector to take charge of the estate, and thereupon the Collector shall

* See 7 Suth. W. R., C. R., 246.

† The Act contemplates only the question of lunacy or sanity at the time of the inquiry. There is no provision that the inquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind.—*Ajodhya Prasad Singh v. Umrao Singh*, 6 Beng. 509, 517

‡ See 4 Beng., Appendix, 24.

appoint a manager of the property and a guardian of the person of the lunatic. All the proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior revenue-authorities.*

12. If the person appointed to be manager of the estate of a lunatic, or Remuneration of managers and guardians. the person appointed to be guardian of a lunatic's person, shall be unwilling to discharge the trust gratuitously, the Court or the Collector, as the case may be, may fix such allowance or allowances, to be paid out of the estate of the lunatic, as, under the circumstances of the case, may be thought suitable.

13. The person appointed to be guardian of a lunatic's person shall have Duties of guardian. the care of his person and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the Court or the Collector, as the case may be, for the maintenance of the lunatic and of his family.

14. Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor, if not a lunatic; and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate, or any part thereof, or to grant a lease of any immovable property for any period exceeding five years, without an order of the Civil Court previously obtained.

15. Every person appointed by the Civil Court or by the Collector to be Managers to furnish inventory and annual accounts. Proceeding if accuracy of inventory or accounts be impugned. manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the landed property belonging to the lunatic, and of all such sums of money, goods, and effects, as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the Court or the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate, and the balance remaining in his hands. If any relative of the lunatic, or any public officer, by petition to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and enquire summarily into the matter, and make such order thereon as it shall think proper; or the Court, as its discretion, may refer any such petition to any subordinate Court, or to the Collector if the manager was appointed by the Collector.

16. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

17. It shall be lawful for any relative of a lunatic to sue for an account from any manager appointed under this Act, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of

* Repealed in the Lower Provinces of Bengal by Beng. Act IX. of 1879.

any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

18. The Civil Court, for any sufficient cause, may remove any manager appointed by the Court, not being a public curator, and may appoint such curator or any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all moneys received or disbursed by him. The Court may also, for any sufficient cause, remove any guardian appointed by the Court. In like manner, the Collector, for any sufficient cause, may remove any manager or guardian appointed by the Collector; and the Court, on the application of the Collector, shall compel any manager so removed to deliver his accounts and the property in his hands.

19. The Civil Court may impose a fine not exceeding 500 rupees on any manager of the estate of a lunatic, who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the Court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to close custody until he shall deliver such accounts or property.

20. It appears to the Civil Court, having regard to the situation and condition in life of the lunatic and his family, and the account and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore provided, the Court may, instead of appointing such manager, order that the property, if money, or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the maintenance of the lunatic and his family.

21. When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person, or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the Civil Court, or if the Court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the Court may institute an enquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs. The enquiry shall be conducted in the manner provided in section 4 and the four following sections of this Act; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order for his estate to be delivered over to him, and such order shall be final.

22. Except as otherwise herein provided, all orders made by a Civil Court, or by any subordinate Court under this Act, shall be open to appeal under the rules in force for appeals in miscellaneous cases.

23. The word "lunatic," as used in this Act, unless the contrary appears from the context, shall mean every person found by due course of law to be of unsound mind and incapable of managing his affairs. The expression "Civil Court" shall mean the principal Court of original jurisdiction in the district. Words importing the masculine gender shall include females.

THE MINORS' ACT.

NO. XL. OF 1858.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH DECEMBER 1858.

*An Act for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal.**

WHEREAS it is expedient to make better provision for the care of the persons and property of minors not brought under the superintendence of the Court of Wards; It is enacted as follows:—

Preamble.

1.—[*Repealed by Act XIV. of 1870.*]

2. Except in the case of proprietors of estates paying revenue to Government who have been or who shall be taken under the protection of the Court of Wards, the care of the persons of all minors (not being European British subjects) and the charge of their property shall be subject to the jurisdiction of the Civil Court.

3. Every person who shall claim a right to have charge of property in trust for a minor under a will or deed, or by reason of nearness of kin or otherwise, may apply to the Civil Court for a certificate of administration;

and no person shall be entitled to institute or defend any suit connected with the estate of which he claims the charge until he shall have obtained such certificate.

Provided that, when the property is of small value, or for any other sufficient reason, any Court having jurisdiction may allow any relative of a minor to institute or defend a suit on his behalf, although a certificate of administration has not been granted to such relative.

4. Any relative or friend of a minor in respect of whose property such certificate has not been granted, or, if the property consist in whole or in part of land or any interest in land, the Collector of the district, may apply to the Civil Court to appoint a fit person to take charge of the property and person of such minor.

5. If the property be situate in more than one district, any such application as aforesaid shall be made to the Civil Court of the district in which the minor has his residence.

6. When application shall have been made to the Civil Court either by a person claiming a right to have charge of the property of a minor, or by any relative or friend of a minor, or by the Collector, the Court shall issue notice of the application, and fix a day for hearing the same.

* Declared to apply to the whole of the Lower Provinces, except the Scheduled Districts, by Act XV. of 1874.

On the day so fixed, or as soon after as may be convenient, the Court shall enquire summarily into the circumstances, and pass orders in the case :

Provided always that it shall be competent to the Civil Court to direct any Court subordinate to it to make such enquiry and report the result.

7. If it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and is willing to undertake the trust, the Court shall grant a certificate of administration to such person.

If there is no person so entitled, or if such person is unwilling to undertake the trust, and there is any near relative of the minor who is willing and fit to be entrusted with the charge of the property, the Court may grant a certificate to such relative.

The Court may also, if it think fit (unless a guardian have been appointed by the father), appoint such person as aforesaid or any other relative or friend of the minor to be guardian of the person of the minor.

8. The Court may call upon the Collector or Magistrate for a report on the character and qualification of any relative or friend of the minor who may be desirous or willing to be entrusted with the charge of his property or person.

9. If no title to a certificate be established to the satisfaction of the Court by a person claiming under a will or deed, and if there be no near relative willing and fit to be entrusted with the charge of the property of the minor, and the Court shall think it to be necessary for the interest of the minor that provision should be made by the Court for the charge of his property and person, the Court may proceed to make such provision in the manner hereinafter provided.

10. If the estate of the minor consist of moveable property, or of houses, gardens, or the like, the Court may grant a certificate to the Public Curator appointed under section 19, Act XIX. of 1841 (*for the protection of moveable and immoveable property against wrongful possession in certain cases*), or, if there be no Public Curator, to any fit person whom the Court may appoint for the purpose.

11. Whenever the Court shall grant a certificate of administration to the estate of a minor to the Public Curator or other person as aforesaid, it shall at the same time appoint a guardian to take charge of the person and maintenance of the minor.

The person to whom a certificate of administration has been granted, unless he be the Public Curator, may be appointed guardian.

If the person appointed to be guardian be unwilling to discharge the trust gratuitously, the Court may assign him such allowance, to be paid out of the estate of the minor, as under the circumstances of the case it may think suitable.

The Court may also fix such allowance as it may think proper for the maintenance of the minor; and such allowance and the allowance of the guardian (if any) shall be paid to the guardian by the Public Curator or other person as aforesaid.

12.* If the estate of the minor consist, in whole or in part, of land or any interest in land, the Court may direct the Collector to take charge of the estate, and thereupon the Collector shall appoint a manager of the property of the minor and a guardian of his person, in the same manner and subject to the same rules in respect of such appointments and of the duties to be performed by the manager and guardian respectively, so far as the same may be applicable, as if the property and person of the minor were subject to the jurisdiction of the Court of Wards.

13. In all enquiries held by the Civil Court under this Act, the Court may make such order as to the payment of costs by the person on whose application the enquiry was made, or out of the estate of the minor or otherwise, as it may think proper.

14.* Whenever one or more of the proprietors of an estate which has come under the jurisdiction of the Court of Wards on account of the disqualification of all the proprietors, cease to be disqualified, and the estate, in consequence, ceases to be subject to the jurisdiction of the Court of Wards, notwithstanding the continued disqualification of one or more of the co-proprietors, the Collector of the district in which the estate is situate may represent the fact to the Civil Court; and the Court, unless it see sufficient reason to the contrary, shall direct the Collector to retain charge of the persons and of the shares of the property of the still disqualified proprietors, during the continuance of their disqualification, or until such time as it shall be otherwise ordered by the Court.

The Collector shall in such case appoint a guardian for the care of the persons, and a manager for the charge of the property of the disqualified proprietors, in the manner prescribed in section 12.

If the property be situate in more than one district, the representation shall be made by the Collector who had the general management of the property under the Court of Wards to the Civil Court of his own district, and the orders of the Court of that district shall have effect also in other districts in which portions of the property may be situate.

15.* The proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior revenue-authorities.

16. The Public Curator and every other administrator to whom a certificate shall have been granted under section 10 shall, within six months from the date of the certificate, deliver in Court an inventory of any immoveable property belonging to the minor, and of all such sums of money, goods, effects, and things as he shall have received on account of the estate, together with a statement of all debts due by or to the same.

* Sections 12, 14, and 15, have been repealed locally by Bengal Act IX. of 1879. Under the same Act, "all persons and properties which, at the commencement of this Act (IX. of 1879), are under the charge of the Collector by virtue of an order of the Civil Court under s. 11 of Act XXXV. of 1858, or under s. 12, s. 14, or s. 21 of Act XL. of 1858, shall, from such commencement, be deemed to be under the charge of the Court of Wards;" and "all orders and appointments made by Collectors under Act XXXV. of 1858, or Act XL. of 1858, and now in force, shall, so far as they are consistent with this Act (IX. of 1879), be deemed to be made under this Act" (IX. of 1879); and "all suits and proceedings now pending, which may have been commenced under the Court of Wards' Act, 1870, or by Collectors under Act XXXV. of 1858 or Act XL. of 1858, shall be deemed to be commenced under this Act" (IX. of 1879).

And the Public Curator and every such other administrator shall furnish annually, within three months from the close of the year of the era current in the district, an account of the property in his charge, exhibiting the amounts received and disbursed on account of the estate, and the balance in hand.

If any relative or friend of a minor, or any public officer, by petition to the Court, shall impugn the accuracy of the said inventory or account be inventory and statement, or of any annual account, impugned. the Court may summon the curator or administrator and enquire summarily into the matter, and make such order thereon as it shall think proper, or the Court at its discretion may refer such petition to any subordinate Court.

17. All sums received by the Public Curator or such other administrator on account of any estate, in excess of what may be required for the current expenses of the minor or of the estate, shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

18. Every person to whom a certificate shall have been granted under the provisions of this Act may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the minor.

But no such person shall have power to sell or mortgage any immoveable property, or to grant a lease thereof for any period exceeding five years, without an order of the Civil Court previously obtained.

19. It shall be lawful for any relative or friend of a minor, at any time during the continuance of the minority, to sue for an account from any manager appointed under this Act, or from any person to whom a certificate shall have been granted under the provisions of this Act, or from any such manager or person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

20. If the disqualification of a person for whose benefit a suit shall have been instituted under this Act cease before the final decision thereof, it shall be lawful for such person to continue the prosecution of the suit on his own behalf.

21.* The Civil Court for any sufficient cause may recall any certificate granted under this Act, and may direct the Collector or to take charge of the estate, or may grant a certificate to the Public Curator or any other person, as the case may be; and may compel the person whose certificate has been recalled to make over the property in his hands to his successor, and to account to such successor for all monies received and disbursed by him.

Revocation of certificate. The Court may also for any sufficient cause remove a guardian appointed by the Court.

* So much of this section as provides that the Civil Court may direct the Collector to take charge of an estate has been locally repealed by Bengal Act IX. of 1879.

22. The Civil Court may impose a fine not exceeding five hundred rupees on any person who may wilfully neglect or refuse to deliver his accounts or any property in his hands; within the prescribed time, or a time fixed by the Court; and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court; and may also commit the recusant to close custody until he shall consent to deliver such accounts or property.

23. The Civil Court may permit any person to whom a certificate shall have been granted under this Act not being the Civil Court may permit resignation of trust, &c. Public Curator, and any guardian appointed by the Court, to resign his trust; and may give him a discharge therefrom on his accounting to his successor, duly appointed, for all monies received and disbursed by him, and making over the property in his hands.

24. The Public Curator, and every other administrator to whom a certificate shall have been granted under section 10, Remuneration of Public Curator, &c. shall be entitled to receive such commission (not exceeding five per centum) on the sums received and disbursed by him, or such other allowance, to be paid out of the minor's estate, as the Civil Court shall think fit.

25. Every guardian appointed by the Civil Court or by the Collector under this Act, who shall have charge of any male minor, shall be bound to provide for his education in a suitable manner.

The general superintendence and control of the education of all such minors shall be vested in the Civil Court or in the Collector, as the case may be; and the provisions of Act XXVI. of 1854 declared applicable. *of Act XXVI. of 1854 (for making better provision for the education of male minors subject to the superintendence of the Court of Wards) shall, so far as is consistent with the provisions herein contained, be applicable to the Civil Court or to the Collector, as the case may be, in respect to such minors, and to every such guardian.**

26. For the purposes of this Act, every person shall be held to be a minor who has not attained the age of eighteen years.†

27. Nothing in this Act shall authorize the appointment of a guardian of the person of a female whose husband is not a minor, or the appointment of a guardian of the person of any minor whose father is living and is not a minor; and nothing in this Act shall authorize the appointment of any person other than a female as the guardian of the person of a female.

If a guardian of the person of a minor be appointed during the minority of the father or husband of the minor, the guardianship shall cease as soon as the father or husband (as the case may be) shall attain the age of majority.

28. All orders passed by the Civil Court, or by any subordinate Court under this Act, shall be open to appeal under the rules in force for appeals, in miscellaneous cases, from the orders of such Court and the subordinate Courts.

* Repealed by Bengal Act IV. of 1870, s 86, so far as it relates to any guardian appointed thereunder.

† See *Jadunath Mittal v. Bolyehard Dutt*, 7 Beng. 612, 613.

29. The expression "Civil Court" as used in this Act shall be held to mean the principal Court of original jurisdiction in the district, and shall not include the Supreme Court; and nothing contained in this Act shall be held to affect the powers of the Supreme Court over the person or property of any minor subject to its jurisdiction.*

Construction of "Civil Court."
Powers of Supreme Court not affected.

Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

* See *Jadunath Mitter v. Bolyechand Dutt*, 7 Beng. 612, 613.

COLLECTION OF DEBTS ON SUCCESSIONS.

ACT NO. XXVII. 1860.

RECEIVED THE G.-G.'s ASSENT ON THE 25TH JUNE 1860.

*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons.**

WHEREAS it is expedient to consolidate and amend certain Acts now in force which provide greater security for persons paying to the representatives of deceased Hindús, Muhammadans, and others not usually designated as British subjects, debts which are payable in respect of the estates of such deceased persons, and which facilitate the collection of such debts by removing all doubts as to the legal title to demand and receive the same ; It is enacted as follows :—

1.—[*Repealed by Act XVI. of 1874.*]

2. No debtor of any deceased person shall be compelled in any Court to pay his debt to any person claiming to be entitled to the effects of any deceased person or any part thereof except on the production of a certificate to be obtained in manner hereinafter mentioned, or of a probate or letters of administration, unless the Court shall be of opinion that payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled.†

3. The District Court within the jurisdiction of which the deceased shall have ordinarily resided at the time of his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, shall have authority to grant a certificate‡ under this Act.

The applicant in his petition shall set forth his title.

The Court shall issue notice of application, inviting claimants, and fixing a day for hearing the petition, and upon the appointed day, or as soon after as may be convenient, shall determine the right to the certificate,§ and grant the same accordingly.

4. The certificate of the District Court shall be conclusive of the representative title against all debtors to the deceased,|| and shall afford full indemnity to all debtors paying their debts to the person in whose favour the certificate has been granted.

* Repealed, except as to Hindús, Muhammadans, and Buddhists, and persons exempted by section 332 of the Indian Succession Act, 1865, from the operation of that Act, by Act XXIV. of 1867. (As to Native Christians, see 7 Mad. 121.) Declared to apply (so far as unrepealed) to the whole of British India, except the Scheduled Districts, by Act XV. of 1874. As to the court-fee on certificates under Act XXVII. of 1860, see Act VII. of 1870, sched. 1., No. 12. As to transfer of applications for certificates, see Act VI. of 1871, s. 27.

† See 8 Bomb., A. C. J., 152; 6 Mad. 131.

‡ A certificate cannot be granted for the collection of a fraction of the debts of the deceased—1 Beng., Short Notes, vii.: 3 Beng. 405.

§ As to the discretion of the Court when there are rival claimants, 4 Beng., A. C. J., 149; and see 2 Bomb. 398.

|| But only against such debtors, 2 Mad. 165.

5. The Court may* take such security as it shall think necessary from any person to whom it shall grant a certificate, for Court may take security from grantee of certificate. rendering an account of debts received by him, and for indemnity of persons who may be entitled to the whole or any part of the monies received by virtue of such certificate, whose right to recover the same by regular suit against the holder of the certificate is not affected by this Act.

6. The granting of such certificate may be suspended by an appeal Powers of Sadr Court on to the Sadr Court, which Court may declare the appeal. the party to whom the certificate should be granted, or may direct such further proceedings for the investigation of the title as it shall think fit.

The Court may also, upon petition, after a certificate shall have been And to supersede certificate of District Court. granted by the District Court, grant a fresh certificate in supersession of the certificate granted by the District Court.

Such fresh certificate shall not affect any payments made to the person to whom any former certificate may have been Effect of fresh certificate. granted, without notice that the same has been superseded, but shall entitle the person named therein to receive all monies that may have been recovered under the first certificate from the person to whom the same may have been granted.†

7. Every certificate shall give authority to the person to whom the same Local extent of power given by certificate. is granted throughout the Presidency within which the same is granted, and no certificate subsequently granted in respect of the same property shall be valid or effectual, except as hereinafter mentioned.

8. If the estate of the deceased shall include any Government securities or bank-shares, or any shares in any public company, the certificate may empower the person certified Powers under certificate as to Government securities, bank and other shares. as aforesaid to receive interest or dividends thereon, or on any of them, or to negotiate the same or any of them ;

in such case the certificate shall describe the securities and shares in respect of which such powers are given, and such powers shall not be vested by the certificate except by express words.

9. In the case of disputes among persons claiming to be jointly entitled to be proprietors of any Government securities as the representatives of any deceased person, the Appointment of trustee for securities in case of dispute among joint claimants. District Court, whenever sufficient cause shall be shown, and on the request of any such claimant, may, so far as concerns the said securities, grant a certificate under this Act to such person as shall be, from time to time, appointed by the Local Government to act as trustee under this section, and shall specify in such certificate the several persons appearing to him to be such proprietors and their several shares ;

and the said trustee, by virtue of such certificate, shall be entitled to receive and give discharges for the interest accruing due on such securities, and shall account for His powers and duties. and pay the sum to the several persons specified in the certificate to be thereunto entitled, according to the shares therein set forth, and shall be empowered

* This is discretionary, 7 Bomb., App., xxvi.

† As to recalling certificates granted without jurisdiction or obtained by fraud, see 6 Beng., App., 128 ; 8 Beng., App., 13.

to act in all other respects concerning the said securities as agent for such persons, and shall be entitled to receive such commission, not exceeding one

Commission.

per centum, on the sums received and paid by him, as the Local Government shall think fit.

Provided, nevertheless, that the right of any other person to recover the whole or any part of the monies so paid by regular suit against all or any of the persons to whom the same have been paid, shall not be affected by this Act.

10. If any such disputes among persons claiming to be proprietors of Government securities are not ended within two years from the date of the certificate granted under the last preceding section, the said trustee may apportion the principal sum of the said securities rateably among the parties appearing from the certificate to be proprietors thereof, and may apply for and receive new securities from the proper officer appointed to issue the same in the respective names of the several parties certified to be entitled thereto :

provided that such new securities shall be issued only according to the rules in use for the regulation and issue of such Government securities, and the receipt of the said trustee for such new securities, by endorsement on the old securities or otherwise, shall be a legal discharge to the Government against the disputing parties claiming to be entitled to the several amounts for which such securities shall be issued.

Provided always that, if the amount of any Government securities in dispute or any part thereof shall not be sufficient to admit of their rateable division according to the rules applicable to the issue of such securities, the said trustee may sell and dispose of the disputed securities, or such part as shall be necessary under this provision, and apportion the proceeds thereof among the parties entitled to receive the same.

11. Every certificate granted to the trustee appointed under section 9 shall be taken to supersede and annul any previous certificate so far as such previous certificate relates to the said Government securities.

12. When a certificate shall have been granted, in cases in which such certificate would be valid but for the previous grant of a certificate, all payments made to the person holding the later certificate in ignorance of the grant of the previous certificate shall be held good against claims under such previous certificate.

13. With regard to the property of a deceased Hindú, Muhammadan, or other person not usually designated by the term "British subject," no certificate in respect of any such property shall be valid if made after a probate or letters of administration granted in respect of the same, provided assets belonging to the deceased were, at the time of his death, within the local jurisdiction of the Court granting the probate or letters of administration.

14. Where a certificate shall have been granted, in cases in which such certificate would be valid but for a probate or letters of administration previously granted, all payments made to the person holding the certificate in ignorance of the previous granting of the probate or letters of administration shall be held good against claims under the probate or letters of administration so previously granted.

15. No probate or letters of administration shall be valid for the purpose of the recovery of debts, or for the security

Probate or letters void after grant of certificate. of debtors, after the certificate granted in respect of the same property for which such probate or letters of administration shall have been granted, provided assets belonging to the deceased were, at the time of his death, within the jurisdiction of the Court granting such certificate.

Proviso.

16. Where probate or letters of administration may have been granted in cases in which such probate or letters of administration would be valid but for the previous

Payments under probate grant of certificate. grant of a certificate, all payments made in ignorance of the previous grant of the certificate shall be held good against claims under such previous certificate.

17. Curators appointed under Act XIX. of 1841, who may be invested with certain powers which are conferred on persons

Curators prohibited from exercising certain powers. obtaining certificates under this Act, shall not exercise any powers which, but for that Act, would lawfully belong to persons obtaining certificates, or to executors or administrators, where a certificate, probate, or letters of administration has been actually obtained; but all persons who may have paid debts or rents to a curator authorized by a Court to receive the same shall be indemnified, and the curator shall be responsible for the payment of the same to the person who has obtained a certificate, the executor or administrator, as the case may be.

Payments to authorized curator.

18. All probates and letters of administration granted by any Supreme Court of Judicature in cases in which any assets

Effect of probates and letters the same as if granted to representatives of British subjects. belonging to deceased persons were, at the time of their deaths, within the local jurisdiction of the Court granting the probate or letters of administration, shall have the effect of probate and letters of administration granted in respect of the property of British subjects, but for the purpose of the recovery of debts only and the security of debtors paying the same, except so far as is in this Act provided.

19. A certificate of administration granted by the British representative accredited to any foreign Prince or State shall, as

Effect of certificates granted by British representative in foreign States. regards the residents within the territories of such Prince or State, have the same effect in respect to Government securities as a certificate granted to a native subject of Her Majesty under the provisions hereinbefore contained.

20. Every certificate of administration granted under the last preceding section shall, as regards the Government securities,

Local extent of power given by such certificates. give authority to the person to whom the same shall be granted throughout the British territories in India, and have the same effect throughout the said territories as a certificate granted under section 7 of this Act has within the Presidency within which the same is granted.

21. Any Court or officer authorized to grant a certificate may, from time to time, extend the same to any Government security or bank-share not originally specified therein,

Extension of certificate.

and every such extension shall have the same effect as if the Government security or bank-share to which the certificate shall be extended had been originally specified therein.

22. Upon the extension of a certificate, security may be required in the same manner as upon the original grant of a certificate.

23. Nothing in this Act contained shall be held to extend to the property of any person usually designated as a British subject.

24. The following words and expressions in this Act shall have the meaning hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

Gender. Words importing the masculine gender shall include females :

"District Court." The words "District Court" shall mean the principal Civil Court of original jurisdiction of a zila or district :

The words "Sadr Court" shall be deemed to include the highest Civil Court of Appeal in any part of the British territories in India not subject to the control and superintendence of a Sadr Court.

THE MINORS' AMENDMENT ACT.

NO. IX. OF 1861.*

RECEIVED THE G.-G.'s ASSENT ON THE 24TH APRIL 1861.

An Act to amend the law relating to Minors.

WHEREAS it is expedient to amend the law for hearing suits relative to the custody and guardianship of minors; It is enacted as follows:—

1. Any relative or friend of a minor† who may desire to prefer any claim in respect of the custody or guardianship of such minor may make an application by petition, either in person or by a duly constituted agent, to the principal Civil Court of original jurisdiction in the district by which such application, if preferred in the form of a regular suit, would be cognizable, and shall set forth the grounds of his application in the petition.

The Court, if satisfied by an examination of the petitioner on his agent, if he appear by agent, that there is ground for proceeding, shall give notice of the application to the person named in the petition as having the custody or being in the possession of the person of such minor, as well as to any other person to whom the Court may think it proper that such notice should be given, and shall fix as early a day as may be convenient for the hearing of the petition and the determination of the right to the custody or guardianship of such minor.

2. The Court may direct that the person having the custody or being in possession of the person of such minor shall produce him or her in Court or in any other place appointed by the Court on the day fixed for the hearing of the petition or at any other time, and may make such order for the temporary custody and protection of such minor as may appear proper.

3. On the day appointed for the hearing of the petition, or as soon after as may be practicable, the Court shall hear the statements of the parties or their agents if they appear by agents, and such evidence as they or their agents may adduce, and thereupon shall proceed to make such order as it shall think fit in respect to the custody or guardianship of such minor and the costs of the case.

4. In cases instituted under this Act, the Court shall be guided by the procedure prescribed in Act VIII. of 1859‡ (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter) in so far as the same shall be applicable and material; and any order made by the Court may be enforced as if such order had been made in a regular suit.

* Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874. It does not apply to European British minors, 2 N. W. P. 79, 81. As to them, see Act XIII. of 1874.

† See Act IX. of 1875, s. 3.

‡ Superseded by Act XIV. of 1882.

5. An appeal shall lie to the Sadr Court from any order made by a lower Court under this Act, under the rules applicable to regular appeals to such Sadr Court, except that the petition of appeal may be written on a stamp-paper of the value prescribed for petitions to the Sadr Court.

6. Any order passed under this Act in respect to the custody or guardianship of a minor shall not be liable to be contested in a regular suit.

7. Nothing in this Act shall be taken to interfere with the jurisdiction exercised under the laws in force by any Supreme Court of Judicature or the Courts of Wards, or under Act XXI. of 1855 (*for making better provision for the education of male minors and the marriage of male and female minors, subject to the superintendence of the Courts of Wards in the Presidency of Fort Saint George*), and Act XL. of 1858 (*for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal*).

8. The term "Sadr Court" in this Act shall denote the highest Court of Appeal in any part of the British territories in India.

Interpretation-clause.

THE CARRIERS' ACT.

NO. III. OF 1865.*

RECEIVED THE G.-G.'s ASSENT ON THE 14TH FEBRUARY 1865.

An Act relating to the rights and liabilities of Common Carriers.†

WHEREAS it is expedient not only to enable common carriers to limit their liability for loss of or damage to property delivered to them to be carried, but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents; It is enacted as follows:—

Short title.

1. This Act may be cited as "The Carriers' Act, 1865."

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

"Common carrier" denotes a person, other than the Government,‡ engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately:

"Person" includes any association or body of persons, whether incorporated or not:

Words in the singular number include the plural, and words in the plural include the singular.

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.§

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix.

For carrying such property, payment may be required at fixed rates.

Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

Proviso.

5. In case of the loss of or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

Person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage

* Repealed as to carriers by rail by Act IV. of 1879.

† Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874.

‡ See 3 N. W. P. 198.

§ "The earlier sections extend to India the principle embodied in the English Statute 11, Geo. IV. & 1 Wm. IV., c. 68."—*Statement of Objects and Reasons.*

6. The liability of any common carrier for the loss of or damage to any

In respect of what property liability of carrier not limited by public notice.

affected by any public notice ;

but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act No. X. of 1870* (*for the acquisition of land for public purposes and for Companies*), may, by special contract,

signed by the owner of such property so delivered as last aforesaid, or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

7. The liability of the owner of any railroad or tramroad constructed

Liability of owner of railroad made under Act X. of 1870, not limited by special contract.

shall not be deemed to be limited or affected by any special contract ;

but the owner of such railroad or tramroad shall be liable for the loss

When such owner answerable for loss or damage.

been caused by negligence or agents or servants.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried, where such loss or damage shall have arisen from the negligence or criminal act of the carrier or any of his agents or servants.

9. In any suit brought against a common carrier for the loss, damage, or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage, or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.†

10. Nothing in this Act shall affect the provisions contained in the ninth, tenth, and eleventh sections of Act No. XVIII. of 1854 (*relating to Railways in India*).

Saving of provisions of Act XVIII. of 1854.

SCHEDULE.

Gold and silver coin.
Gold and silver in a manufactured or unmanufactured state.
Precious stones and pearls.
Jewellery.
Time-pieces of any description.
Trinkets.
Bills and hundis.
Currency-notes of the Government of India, or notes of any Banks or securities for payment of money, English or Foreign.
Stamps and stamped-paper.
Maps, prints, and works of art.
Writings.

Title-deeds.
Gold or silver plate or plated articles.
Glass.
China.
Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
Shawls and lace.
Cloths and tissues embroidered with the precious metals, or of which such metals form part.
Articles of ivory, ebony, or sandal-wood.

* See Act X. of 1870, s. 2.

† This is in accordance with the English common-law. See *Ross v. Hill*, 2 Com. B. 890 ; *Richards v. Lond., Brighton, & S. C. Ry. Co.*, 7 Com. B. 839.

INDIAN SUCCESSION ACT

NO. X. OF 1865.*

RECEIVED THE G.-G.'s ASSENT ON THE 16TH MARCH 1865.

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India ; It is enacted as follows :—

Preamble.

PART. I.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Succession Act, 1865."

2. Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.†

Act to constitute law of British India in cases of intestate or testamentary succession.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

Words importing the singular number include the plural : words importing the plural number include the singular ; and words importing the male sex include females :

"Person" includes any company or association, or body of persons, whether incorporated or not :

"Year" and "month" respectively mean a year a month reckoned according to the British calendar :

"Immoveable property" includes land, incorporeal tenements, and things attached to the earth, or permanently fastened to anything which is attached to the earth :

"Moveable property" means property of every description except immoveable property :

"Province" includes any division of British India having a Court of the last resort :

"British India" means the territories which are or may become vested in Her Majesty or Her Successors by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better Government of India*) other than the Settlement of Prince of Wales's Island, Singapore, and Malacca :

* As to the exemption of Pársis from portions of the Succession Act, see Act XXI. of 1865, s. 8. As to the application of portions of the Succession Act to the wills of Hindús, Jainas, Sikhs, and Buddhists in the Lower Provinces and in the towns of Madras and Bombay, see Act XXI. of 1870.

† See 12 Beng. 427.

"District Judge" means the Judge of a principal Civil Court of original jurisdiction :

"Minor"* means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person :

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will.

"Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :

"Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided :

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor :

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part ; and

"High Court" shall mean the highest Civil Court of Appeal therein, and, for the purposes of section 242, 242A, 246A, and 277A, shall include the Court of the Recorder of Rangoon.†

4. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.‡

PART II.

OF DOMICILE.

5. Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations.

(a.) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(b.) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

* See 1 Beng., O. C. J., 13 : Act IX. of 1875, s. 3.

† See Act XIII. of 1875, s. 1.

‡ See 3 Beng. 372. "This section shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed, at the time of the marriage, the Hindú, Muhammadan, Buddhist, Sikh, or Jaina religion."—Act III. of 1874, s. 2, last para.

One domicile only affects succession to moveables.

6. A person can only have one domicile for the purpose of succession to his moveable property.

7. The domicile of origin of every person of legitimate birth is in the country in which, at the time of his birth, his father was domiciled: or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

9. The domicile of origin prevails until a new domicile has been acquired.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(a.) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(b.) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(c.) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d.) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not, by such residence, acquire a domicile in British India, however long the residence may last.

(e.) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f.) A, whose domicile is in the French Settlement of Chandernagore is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(g.) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

11. Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government)* a declaration

* See, as to Oudh, *Gazette of India*, 15th July 1865, p. 813; as to British Burma, *ibid.*, 9th July 1865, p. 845.

in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

12. A person who is appointed by the Government of one country to be

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

its ambassador, consul, or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Continuance of new domicile.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Minor's domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married, or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by woman on marriage.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's acquisition of new domicile.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Lunatic's acquisition of new domicile.

Succession to moveable property in British India, in absence of proof of domicile elsewhere.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

PART III.

OF CONSANGUINITY.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Kindred or consanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Lineal consanguinity.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son ; his grandfather and grandson in the second degree ; his great-grandfather and great-grandson in the third.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

23. For the purpose of succession, there is no distinction between those Persons held for purpose of succession to be similarly related to deceased. who are related to a person deceased through his father, and those who are related to him through his mother ;

nor between those who are related to him by the full blood, and those who are related to him by the half-blood ;

nor between those who were actually born in his life-time, and those who, at the date of his death, were only conceived in the womb, but who have been subsequently born alive.

Mode of computing degrees of kindred.

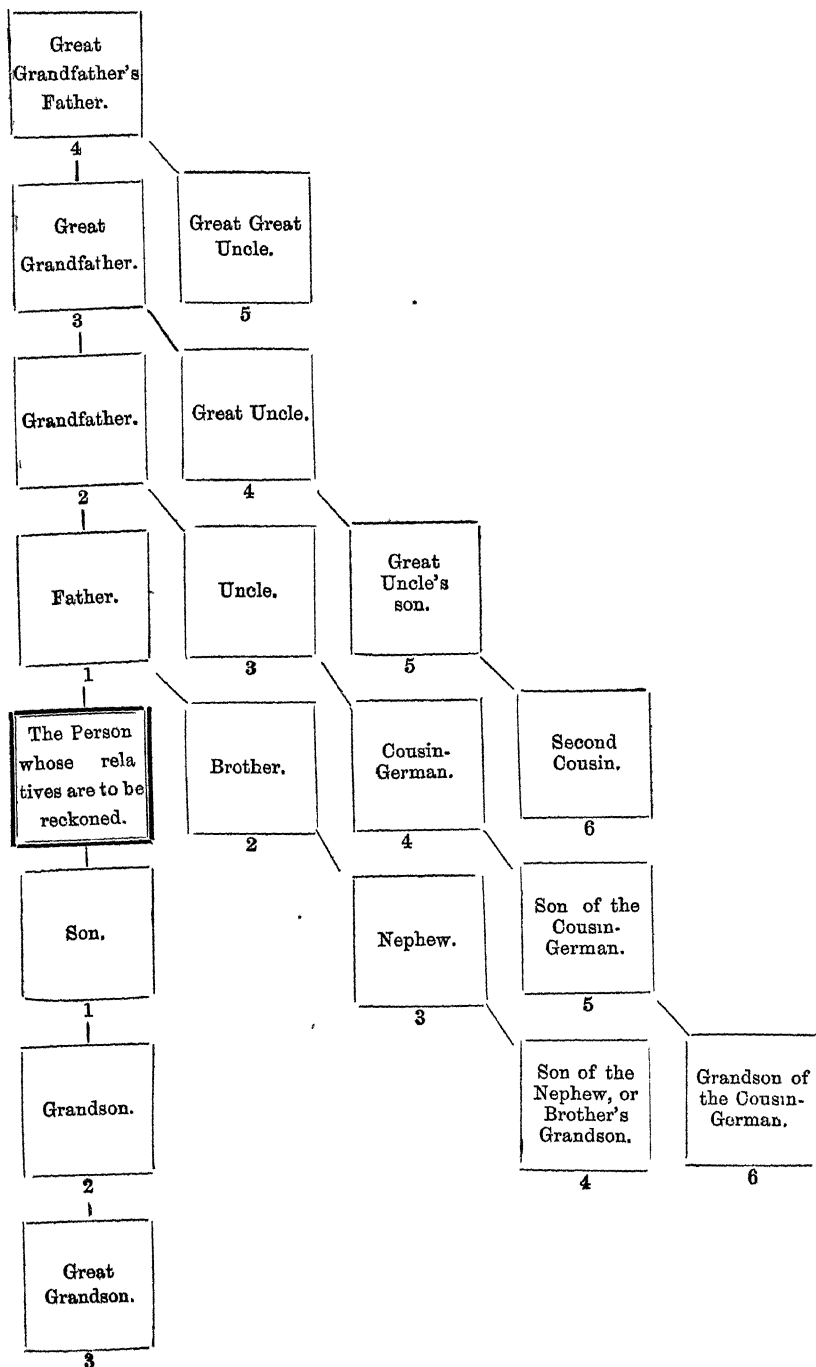
24. In the annexed table of kindred, the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree ; there being one degree of ascent to the father, and another to the common ancestor, the grandfather ; and from him one of descent to the uncle, and another to the cousin-german ; making in all four degrees.

A grandson of the brother and a son of the uncle, *i.e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

TABLE OF CONSANGUINITY.



PART IV. OF INTESTACY.

As to what property deceased considered to have died intestate.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(a) A has left no will. He has died intestate in respect of the whole of his property.

(b) A has left a will, whereby he has appointed B his executor ; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d.) A has bequeathed 1,000*l*. to B, and 1000*l*. to the eldest son of C, and has made no other bequest ; and has died leaving the sum of 2,000*l*. and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l*.

26. Such property devolves upon the wife or husband, or upon those who

Devolution of such property. are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from the distributive share of her husband's estate.

27. Where the intestate has left a widow, if he has also left any lineal

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

28. Where the intestate has left no widow, his property shall go to his

Where intestate has left no widow, and where he has left no kindred.

lineal descendants or to those who are of kindred to him, not being lineal descendants according to the rules herein contained ; and if he has left none who are of kindred to him, it shall go to the Crown.

PART V.

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(a.) *When he has left lineal descendants.*

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows :—
Rules of distribution.

30. Where the intestate has left surviving him a child or children, but

Where intestate has left no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

31. Where the intestate has not left surviving him any child, but has

Where intestate has left no child, but grandchild or grandchildren. left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(a.) A has three children, and no more ; John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(b.) But if Henry has died leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(c.) A has two children, and no more ; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

32. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where intestate has left only great-grandchildren or remoter lineal descendants.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of

kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him ; and

one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease ; and

one of such shares shall be allotted in respect of each of such deceased lineal descendants ; and

the share allotted in respect of each of such deceased lineal descendants shall belong to the surviving child or children or more remote lineal descendants, as the case may be ; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(a.) A had three children, John, Mary, and Henry ; John died, leaving four children, and Mary died leaving one, and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(b.) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild ; and the remaining one-ninth is equally divided between the two great-grandchildren.

(c.) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry ; one-third to Mary's child ; and one-third is divided into four parts one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b.) *Where the Intestate has left no lineal Descendants.*

34. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows :—

Where intestate's father living.

35. If the intestate's father be living, he shall succeed to the property.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Where intestate's father dead, but his mother, brothers, and sisters living.

Illustration.

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half-blood, takes one-fourth.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime, are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate's father dead, and his mother, a brother or sister, and children of any deceased brother or sister, living.

Illustration.

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half-blood, who was the son of his father, but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate's father dead, and his mother and children of any deceased brother or sister living.

Illustration.

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third and the children of George divide the remaining one-third equally between them.

Where intestate's father dead, but his mother living, and no brother, nor sister, nor nephew.

39. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

40. Where the intestate has left neither lineal descendant, nor father, nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant, nor father, nor mother.
 41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustrations.

(a.) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(b.) A, the intestate, has left a great-grandfather, or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these, being in the third degree, shall take equal shares.

(c.) A, the intestate, left a great-grandfather, and uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these, being in the third degree, shall take equal shares.

(d.) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

42. Where a distributive share in the property of a person who has died Children's advancements intestate shall be claimed by a child, or any descendant of a child, of such person, no money, or other property which the intestate may, during his life, have paid, given, or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

PART VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE-SETTLEMENTS ON PROPERTY.

43. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or, if he be dead or absent from British India, with the approbation of the High Court.

PART VII.*

OF WILLS AND CODICILS.

Persons capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose of by will any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind, are not hereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(a.) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(b.) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(c.) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian.

47. A father, whatever his age may be, may, by will, appoint a guardian or guardians for his child during minority.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(a.) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his (A's) favour; such will has been obtained by fraud, and is invalid.

(b.) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c.) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(d.) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e.) A being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is *not* a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(f.) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

* Of this Part, sections 46, 48, and 49, extend to the wills of Hindús, Jains, Sikhs, and Buddhists in the Lower Provinces and in the towns of Madras and Bombay. —Act XXI. of 1870.

(g.) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(h.) A, with a view to obtaining a legacy from B, pays him attention, and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

Will may be revoked or altered.

PART VIII.*

OF THE EXECUTION OF UNPRIVILEGED WILLS.

50. Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules —

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix the mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator,† but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

51. If a testator, in a will or codicil duly attested, refers to any other document than actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

Incorporation of papers by reference.

PART IX.

OF PRIVILEGED WILLS.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the fifty-third section. Such wills are called privileged wills.

* This Part extends to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

† 3 N. W. P. 35.

Illustrations.

(a.) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(b.) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged will.

(c.) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(d.) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(e.) A, an admiral who commands naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(f.) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills. 53. Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules:—

First.—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested,

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X.

OF THE ATTESTATION, REVOCATION, ALTERATION, AND REVIVAL OF WILLS.

54. A will shall not be considered as insufficiently attested by reason of

Effect of gift to attesting witness, any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband;

but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.*

Witness not disqualified by interest or by being executor.

56. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Revocation of will by testator's marriage.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Power of appointment defined.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation of unprivileged will or codicil.

Illustrations.

(a.) A has made an unprivileged will; afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b.) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

58. No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof, shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Effect of obliteration, interlineation, or alteration in unprivileged will.

59. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation of privileged will or codicil.

* This section, and sections 57—60 (both inclusive), extend to the wills of Hindūs, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should, at the time of doing that act, be in a situation which entitles him to make a privileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same ;

and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI.

OF THE CONSTRUCTION OF WILLS.*

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must enquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(a.) A, by his will, bequeaths 1,000 rupees to his eldest son,† or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(b.) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest ; that is to say, what estate of the testator's is called Black Acre.

(c.) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

63. Where the words used in the will to designate or describe a legatee, Misnomer or misdescription or a class of legatees, sufficiently show what is of object. meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

* Of this Part, sections 61—77 (both inclusive) apply to the will of Hindus, &c., in the Lower Provinces and in the town of Madras and Bombay.—Act XXI. of 1870.

† See Act XXI. of 1870, s. 6.

Illustrations.

(a.) A bequeaths a legacy "to Thomas, the second son* of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b.) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c.) The testator bequeaths his property "to A and B, the legitimate children* of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(d.) The testator gives his residuary estate to be divided among "his seven children,"* and, proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(e.) The testator, having six grandchildren,* makes a bequest to "his six grandchildren," and, proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(f.) The testator bequeaths "1,000 rupees to each of the three children* of A." At the date of the will, A has four children. Each of these four children* shall, if he survives the testator, receive a legacy of 1,000 rupees.

64. Where any word material to the full expression of the meaning

When words may be sup- has been omitted, it may be supplied by the con-
plied. text.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

65. If the thing which the testator intended to bequeath can be suffi-

Rejection of erroneous par-
ticulars in description of
subject.

ciently identified from the description of it given
in the will, but some parts of the description do
not apply, such parts of the description shall be
rejected as erroneous, and the bequest shall take effect.

Illustrations.

(a.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh lands of the testator lying in L shall pass by the bequest.

(b.) The testator bequeaths to A "his zamindári of Rámpúr." He had an estate at Rámpúr, but it was a táluq, and not a zamindári. The táluq passes by this bequest.

66. If the will mentions several circumstances as descriptive of the

When part of description
may not be rejected as erro-
neous.

thing which the testator intends to bequeath, and
there is any property of his in respect of which
all those circumstances exist, the bequest shall be
considered as limited to such property, and it shall not be lawful to reject
any part of the description as erroneous, because the testator had other prop-
erty to which such part of the description does not apply.

Explanation.—In judging whether a case falls within the meaning of
this section, any words which would be liable to rejection under the sixty-
fifth section are to be considered as struck out of the will.

* See Act XXI, of 1870, s. 6.

Illustrations.

(a.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(b.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighás of lands." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

67. Where the words of the will are unambiguous, but it is found by

Extrinsic evidence admissible in case of latent ambiguity.

extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show

which of these applications was intended.

Illustrations.

(a.) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b.) A, by his will, leaves to B "his estate called Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

68. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(a.) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees "to his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth section.

(b.) A bequeaths 1,000 rupees to _____, leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c.) A bequeaths to B _____ rupees, or "his estate of _____." Evidence is not admissible to show what sum or what estate the testator intended to insert.

69. The meaning of any clause in a will is to be collected from the

Meaning of clause to be collected from entire will.

entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Illustrations.

(a.) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use, in a restricted sense, the words in which he describes what he gives to A.

(b.) Where a testator, having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense where it may

When words may be understood in restricted sense, and when in sense wider than usual.

be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(a.) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(b.) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a ship-mate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c.) A, by his will, bequeathed to B all his household-furniture, plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

71. Where a clause is susceptible of two meanings, according to one of

Which of two possible constructions preferred.

which it has some effect, and according to the other it can have none, the former is to be preferred.

No part rejected, if it can be reasonably construed.

72. No part of a will is to be rejected as
destitute of meaning if it is possible to put a reasonable construction upon it.

73. If the same words occur in different parts of the same will, they

Interpretation of words repeated in different parts of will.

must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Testator's intentions to be effectuated as far as possible.

74. The intention of the testator is not to
be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration.

The testator, by a will made on his death-bed, bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the hundred and fifth section, but it shall take effect so far as regards the gift to C D.

75. Where two clauses or gifts in a will are irreconcilable, so that they

The last of two inconsistent clauses prevails.

cannot possibly stand together, the last shall prevail.

Illustrations.

(a.) The testator, by the first clause of his will, leaves his estate of Rámnagar "to A," and, by the last clause of his will, leaves it "to B and not to A." B shall have it.

(b.) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testator says, "I bequeath goods to A;" or, "I bequeath to A;" or, "I leave to A all the goods mentioned in a schedule," and no schedule is found; or, "I bequeath 'money,' 'wheat,' 'oil,' or the like, without saying how much, this is void.

77. The description, contained in a will, of property, the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering description at testator's death.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power;

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint; and the will does not provide for the event of no appointment being made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

Implied gift to objects of power in default of appointment.

Illustration.

A, by his will, bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

80. Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next-of-kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debt independently of such property.

Bequest to "heirs," &c., of particular person without qualifying terms

kin," of a particular person, without any qualifying terms

Illustrations.

(a.) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b.) A bequeaths 10,000 rupees "to B for his life, and after the death of B, to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(c.) A leaves his property to B; but if B dies before him, to B's next-of-kin; B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(d.) A leaves 10,000 rupees "to B for his life, and after his decease, to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

81. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.*

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons; if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(a.) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b.) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(c.) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d.) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e.) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(f.) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(g.) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

* This section, and sections 83 and 85, apply to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

Illustrations.

(a.) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors, and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(b.) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c.) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer, the description of issue of A.

85. Where a bequest is made to a class of persons under a general de-

Bequest to class of persons
under general description
only.

scription only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Construction of terms.

86. The word "children" in a will applies only to lineal descendants in the first degree ;

the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children" or "grandchildren" are spoken of ;

the words "nephews" and "nieces" apply only to children of brothers or sisters ;

the words "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of ;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of ;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of ;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half-blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

87. In the absence of any intimation to the contrary in the will, the

Words expressing relation-
ship denote only legitimate
relatives, or, failing such, re-
latives reputed legitimate.

term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or where there is no such legitimate relative, a person who

has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(a.) A, having three children, B, C, and D, of whom B and C are legitimate, and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(b.) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c.) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d.) A leaves a legacy to the "children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B, are objects of the gift.

(e.) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f.) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g.) A makes a bequest in favour of his child to be born of a woman who, never becomes his wife. The bequest is void.

(h.) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

88.* Where a will purports to make two bequests to the same person,

Rules of construction where and a question arises whether the testator will purports to make two intended to make the second bequest, instead of or bequests to same person. in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will :—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(a.) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words, "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words, "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(b.) A, having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

* This section, and sections 89—108 (both inclusive), apply to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay. —Act XXI. of 1870.

(c.) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(d.) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(e.) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(f.) A, by one codicil to his will, bequeaths to B 5,000 rupees, and, by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(g.) A, by his will, bequeaths "500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(h.) A by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(i.) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

89 A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Constitution of residuary legatee.

Illustrations.

(a.) A makes her will, consisting of several testamentary papers, in one of which are contained the following words: "I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(b.) A makes his will, with the following passage at the end of it: "I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure. B is constituted the residuary legatee.

(c.) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Property to which residuary legatee entitled.

Illustration.

A, by his will, bequeaths certain legacies, one of which is void under the hundred and fifth section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

Time of vesting of legacy in general terms.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In what case legacy lapses.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(a.) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(b.) A bequest is made to A and his children.* A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(c.) A legacy is given to A, and in case of his dying before the testator, to B, A dies before the testator. The legacy goes to B.

(d.) A sum of money is bequeathed to A for life, and after his death to B A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(e.) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f.) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

Legacy does not lapse if one of two joint legatees die before testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Effect of words showing testator's intention to give distinct shares.

the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A, B, and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

When lapsed share goes as undisposed of.

bequeathed by the will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B, and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child* or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son* B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will, whereby he bequeaths all his property to his widow D. The money goes to D.

* See s. 6, Act XXI., 1870.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the bequest is made.

Bequest to A for benefit of B does not lapse by A's death.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Survivorship in case of bequest to described class.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(a.) A bequeaths 1,000 rupees to "the children* of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D, and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(b.) A bequeaths a legacy to the children* of B. At the time of the testator's death, B has no children. The bequest is void.

(c.) A lease for years of a house was bequeathed to A for his life, and after his decease to the children* of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(d.) A sum of money was bequeathed to A for her life, and after her decease to the children* of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(e.) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C, in equal shares.

(f.) A bequeaths 1,000 rupees to B for life, and after his death equally among the children* of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(g.) A bequeaths 1,000 rupees to "all the children* born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after-born child of B.

(h.) A bequeaths a fund to the children* of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D, and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

* See s. 6, Act XXI., 1870.

PART XII.

OF VOID BEQUESTS.

Bequest to person by particular description, who is not in existence at testator's death.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

Illustrations.

(a.) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B had no son. The bequest is void.

(b.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(c.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(d.) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(e.) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B, and is alive at B's death. C's son is entitled to the 1,000 rupees.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Bequest to person not in existence at testator's death, subject to prior bequest.

Illustrations.

(a.) Property is bequeathed to A for his life, and after his death to his eldest son* for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b.) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(c.) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled, so that it may belong to herself for life, and may be divisible among

her children* after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(d.) A bequeaths a sum of money to B for life, and directs that, upon the death of B, the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children* after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(a.) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of the sons* of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B, and the minority of the sons of B. The bequest after B's death is void.

(b.) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons* as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(c.) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children* as shall attain the age of 18; but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(d.) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children* as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at this decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

102. If a bequest is made to a class of persons,* with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.†

Bequest to a class, some of whom may come under rules in sections 100 and 101.

* See s. 6, Act XXI., 1870.

† 8 Beng. 400.

Illustrations.

(a.) A fund is bequeathed to A for life, and after his death to all his children* who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if it all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25, until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(b.) A fund is bequeathed to A for his life, and after his death to B, C, D, and all other the children* of A who shall attain the age of 25. B, C, and D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (a). The mention of B, C, and D by name, does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

103. Where a bequest is void by reason of any of the rules contained

Bequest to take effect on failure of bequest void under section 100, 101, or 102.

in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(a.) A fund is bequeathed to A for his life, and after his death to such of his sons* as shall first attain the age of 25, for his life, and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

(b.) A fund is bequeathed to A for his life, and after his death to such of his sons* as shall first attain the age of 25, and if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons* as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

104. A direction to accumulate the income arising from any property

Effect of direction for accumulation.

shall be void; and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death;

and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(a.) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B, and C. A, B, and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(b.) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(c.) The will directs that the rents of the farm of Sultānpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(d.) The will directs that the rents of the farm of Sultānpur shall be accumulated for ten years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(e.) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

105. No man having a nephew or niece or any nearer relative shall

Bequest to religious or charitable uses. have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Illustration.

A, having a nephew, makes a bequest by a will not executed nor deposited as required—

for the relief of poor people ;
for the maintenance of sick soldiers ;
for the erection or support of a hospital ;
for the education and preferment of orphans ;
for the support of scholars ;
for the erection or support of a school ;
for the building and repairs of a bridge ;
for the making of roads ;
for the erection or support of a church ;
for the repairs of a church ;
for the benefit of ministers of religion ;
for the formation or support of a public garden.

All these bequests are void.

PART XIII.*

OF THE VESTING OF LEGACIES.

106. Where, by the terms of a bequest, the legatee is not entitled to

Date of vesting of legacy when payment or possession postponed.

immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

And in such cases the legacy is, from the testator's death, said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the

* This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that if a particular event shall happen the legacy shall go over to another person.

Illustrations.

(a.) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(b.) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(c.) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(d.) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(e.) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(f.) A fund is bequeathed to A, B, and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B, and C, subject to be divested in case A, B, and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy contingent upon specified uncertain event.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of the event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(a.) A legacy is bequeathed D in case A, B, and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B, and C all die under 18, or one of them attains that age.

(b.) A sum of money is bequeathed A "in case he shall attain the age of 18," or "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(c.) An estate is bequeathed to A for life, and after his death to B, if B shall then be living, but if B shall not be then living to C. A, B, and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(d.) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon B's death.

(e.) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(f) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(g) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(h) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(i) A leaves his farm of Sultánpur Khurd to B, if B shall convey his own farm of Sultánpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(j) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(k) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(l) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(m) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

PART XIV.

OF ONEROUS BEQUESTS.

Onerous bequest.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Illustration.

A, having shares in (X), a prosperous joint-stock company, and also shares in (Y), a joint-stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint-stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of two separate and independent bequests to same person may be accepted, and other refused.

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them, and refuse the other, although the former may be beneficial, and the latter onerous.

Illustration.

A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not, by this refusal, forfeit the money.

PART XV.

OF CONTINGENT BEQUESTS.

- 111.** Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

Illustrations.

- (a.) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.
- (b.) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator, or dies in his lifetime leaving a child, the legacy to B does not take effect.
- (c.) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.
- (d.) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning "in case B shall die without children during the lifetime of A."
- (e.) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

- 112.** Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Bequest to such of certain persons as shall be surviving at some period not specified.

Illustrations.

- (a.) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.
- (b.) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.
- (c.) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.
- (d.) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.

OF CONDITIONAL BEQUESTS.

Bequest upon impossible condition. **113.** A bequest upon an impossible condition is void.

Illustrations.

(a.) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(b.) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter is dead at the date of the will. The bequest is void.

Bequest upon illegal or immoral condition. **114.** A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(a.) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(b.) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(a.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D, and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(b.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(c.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A marries in the lifetime of B, C, and D, with the consent of B and C only. A has not fulfilled the condition.

(d.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A obtains the unconditional assent of B, C, and D to his marriage with E. Afterwards B, C, and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(e.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A marries without the consent of B, C, and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(f.) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B. takes effect.

(g.) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

116. Where there is a bequest to one person, and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(a.) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(b.) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

117. Where the will shows an intention that the second bequest shall

When second bequest not to take effect on failure of first.

take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A makes a bequest to his wife, but, in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

118. A bequest may be made to any person with the condition super-

Bequest over, conditional upon happening or not happening of specified uncertain event.

added that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or that, in case a specified uncertain event shall not happen, the thing bequeath-

ed shall go over to another person.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, and 117.

Illustrations.

(a.) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b.) An estate is bequeathed to A, with a proviso that, if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(c.) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(d.) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(e.) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the last pre-

Condition must be strictly fulfilled.

ceding section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(a.) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, C, and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b.) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower, and marries again without the consent of B. The bequest to C does not take effect.

(c.) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

(a.) An estate is bequeathed to A for his life, with a condition superadded that, if he shall not, on a given day, walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(b.) An estate is bequeathed to A for her life, and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(c.) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a.) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(b.) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c.) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d.) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(e.) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh section.

123. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person or the bequest shall cease to have effect, but no time is specified for the performance of the act; if the legatee takes any step which renders impossible, or indefinitely postpones, act for which no time is specified, and on non-performance of which subject-matter to go over.

sible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(a.) A bequest is made to A, with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b.) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Performance of condition, precedent or subsequent, within specified time.

Further time in case of fraud.

PART XVII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

Illustration.

A sum of money is bequeathed towards purchasing a country-residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

Illustrations.

(a.) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(b.) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

127. Where a testator does not absolutely bequeath a fund, so as to

Bequest of fund for certain purposes, some of which cannot be fulfilled.

sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations.

(a.) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and, at his death, shall divide the principal among his children; the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b.) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART. XVIII.

OF BEQUESTS TO AN EXECUTOR.

128. If a legacy is bequeathed to a person who is named an executor

Legatee named as executor cannot take unless he shews intention to act as executor.

of the will, he shall not take the legacy unless he proves the will, or otherwise manifests an intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.

OF SPECIFIC LEGACIES.

129. Where a testator bequeaths to any person a specified part of his

Specific legacy defined.

property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Illustrations.

(a.) A bequeaths to B—

“the diamond-ring presented to him by C:”

“his gold chain:”

“a certain bale of wool:”

“a certain piece of cloth:”

“all his household-goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death:”

“the sum of 1,000 rupees in a certain chest:”

“the debt which B owes him:”

“all his bills, bonds, and securities belonging to him, lying in his lodgings in Calcutta:”

“all his furniture in his house in Calcutta:”

“all his goods on board a certain ship then lying in the river Hugli:”

“2,000 rupees which he has in the hands of C:”

“the money due to him on the bond of D:”

“his mortgage on the Rámpur factory:”

“one-half of the money owing to him on his mortgage of Rámpur factory:”

- "1,000 rupees, being part of a debt due to him from C :"
- "his capital stock of 1,000L. in East India Stock :"
- "his promissory notes of the Government of India, for 10,000 rupees, in their four per cent. loan :"
- "all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company :"
- "all the wine which he may have in his cellar at the time of his death :"
- "such of his horses as B may select :"
- "all his shares in the Bank of Bengal :"
- "all the shares in the Bank of Bengal which he may possess at the time of his death :"
- "all the money which he has in the 5½ per cent. loan of the Government of India :"
- "all the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

- (b.) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

- (c.) A, having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

- (d.) A bequeaths to B—
 his house in Calcutta :
 his zamindari of Rampur :
 his taluq of Rámnagar :
 his lease of the indigo-factory of Salkiya :
 and annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

- (e.) A, by his will, charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D.

Each of these bequests is specific.

- (f.) A bequeaths a sum of money—
 to buy a house in Calcutta for B :
 to buy an estate in zila Faridpur for B :
 to buy a diamond-ring for B :
 to buy a horse for B :
 to be invested in shares in the Bank of Bengal for B :
 to be invested in Government securities for B.

A bequeaths to B—

- "a diamond-ring :"
- "a horse :"
- "10,000 rupees worth of Government securities :"
- "an annuity of 500 rupees :"
- "2,000 rupees, to be paid in cash :"
- "so much money as will produce 5,000 rupees four per cent. Government securities."

These bequests are not specific.

- (g.) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.

No one of these legacies is specific.

Bequest of sum certain where stocks, &c., in which invested, are described.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested, are described in the will.

Illustration.

A bequeaths to B—

“10,000 rupees of his funded property :”

“10,000 rupees of his property now invested in shares of the East Indian Railway Company :”

“10,000 rupees, at present secured by mortgage of Rámpur factory.

No one of these legacies is specific.

131. Where a bequest is made, in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had, at the date of the will, five per cent. Government securities for 5,000 rupees.

The legacy is not specific.

Bequest of money where not payable until part of testator's property disposed of in certain way.

132. A money-legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as B's property in India shall be realized in England.

The legacy is not specific.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

When enumerated articles not deemed specifically bequeathed.

134. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Retention, in form, of specific bequest to several persons in succession.

Illustrations.

(a.) A, having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for 15 years. C can take nothing under the bequest.

(b.) A, having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as B left it, although, if B dies before D, D can take nothing under the bequest.

135. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by a general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and, after B's death, to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.***OF DEMONSTRATIVE LEGACIES.**

137. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a Demonstrative legacy defined particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that

where specified property is given to the legatee, the legacy is specific ;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(a.) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific ; the legacy to C is demonstrative.

(b.) A bequeaths to B—

"ten bushels of the corn which shall grow in his field of Greenacre :"

"80 chests of the indigo which shall be made at his factory of Rámpur :"

"10,000 rupees out of his five per cent. promissory notes of the Government of India :"

an annuity of 500 rupees "from his funded property :"

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his táluq of Rámnagar.

A bequeaths to B—

"10,000 rupees out of his estate at Rámnagar," or charges it on his estate at Rámnagar :

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

138. Where a portion of a fund is specifically bequeathed, and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees, to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees ; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

* This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

PART XXI.*

OF ADEMPMENT OF LEGACIES.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

Illustrations.

- (a.) A bequeaths to B—
 “the diamond ring presented to him by C :”
 “his gold-chain :”
 “a certain bale of wool :”
 “a certain piece of cloth :”
 “all his household-goods which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death :”

A, in his lifetime,
 sells or gives away the ring :
 converts the chain into a cup :
 converts the wool into cloth :
 makes the cloth into a garment :
 takes another house into which he removes all his goods.

Each of these legacies is adeemed.

- (b.) A bequeaths to B—
 “the sum of 1,000 rupees in a certain chest :”
 “all the horses in his stable.”

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

- (c.) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall, in such case, be paid out of the general assets of the testator.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

- (a.) A bequeaths to B—
 “the debt which C owes him :”
 “2,000 rupees which he has in the hands of D :”
 “the money due to him on the bond of E :”
 “his mortgage on the Rámpur factory.”

All these debts are extinguished in A's lifetime, some with and some without his consent.

All the legacies are adeemed.

- (b.) A bequeaths to B—
 “his interest in certain policies of life-assurance.”

A in his lifetime receives the amount of the policies. The legacy is adeemed.

* This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

Illustration.

A bequeathed to B one half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall applied, so far as it will extend, in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

"his capital stock of 1,000*l.* in East India Stock;"

"his promissory notes of the Government of India for 10,000 rupees in their four per cent. loan."

A sells the stock and the notes.

The legacies are adeemed.

Ademption *pro tanto* where stock specifically bequeathed, exist in part only at testator's death.

146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B—

“his 10,000 rupees in the 5½ per cent. loan of the Government of India:”

A sells one-half of his 10,000 rupees in the loan in question.

One-half of the legacy is adeemed.

147. A specific bequest of goods under a description connecting them

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations.

A bequeaths to B “all his household-goods which shall be in or about his dwelling-house in Calcutta at the time of his death.” The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B “all his household-goods which shall be in or about his dwelling-house in Calcutta at the time of his death.” During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

148. The removal of the thing bequeathed from the place in which it is

When removal of thing bequeathed does not constitute ademption.

stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B all the bills, bonds, and other securities for money belonging to him, then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

149. Where the thing bequeathed is not the right to receive something

When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.

of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption:

but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a change between

Change by operation of law of subject of specific bequest between date of will and testator's death.

the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed

was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into five per cent. stock.

A bequeaths to B the sum of 2,000*l.* invested in Consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India, which he has power, under his marriage settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Change of subject without testator's knowledge.

Illustration.

A bequeaths to B "all his three per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased, and belongs to the testator at his death, the legacy is not adeemed.

Stock specifically bequeathed, sold but replaced, and belonging to testator at his death.

PART XXII.*

ON THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself, or by any person under whom he claims; then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

* This Part applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

Illustrations.

(a.) A bequeaths to B the diamond-ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(b.) A bequeaths to B a zamindari, which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(a.) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(b.) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

157. In the absence of any direction in the will, where there is a specific bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate ;

but if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(a.) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b.) A has agreed to take 50 shares in an intended joint-stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c.) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(d.) A bequeaths to B his shares in a joint-stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e.) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3*l.* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.*

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Bequest of thing described
in general terms.

Illustrations.

(a.) A bequeaths to B a pair of carriage-horses, or a diamond ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

(b.) A bequeaths B "his pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

PART XXIV.*

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Bequest of interest or pro-
duce of fund.

person, and the will affords no indication of an
intention that the enjoyment of the bequest should

Illustrations.

(a.) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(b.) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life; and C is entitled to the notes upon B's death.

(c.) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.*

OF BEQUESTS OF ANNUITIES.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Annuity created by will
payable for life only, unless
contrary intention appears
by will.

receive it for his life only, unless a contrary inten-
tion appears by the will. And this rule shall not
be varied by the circumstance that the annuity is
directed to be paid out of the property generally,
or that a sum of money is bequeathed to be invested in the purchase of it.

* This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

Illustrations.

(a.) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(b.) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c.) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled, at his option, to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Illustrations.

(a.) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B is entitled, at his option, to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b.) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

PART XXVI.*

OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

165. Where a parent who is under obligation by contract to provide a portion for a child fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

* This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

No ademption by subsequent provision for legatee.

Illustrations.

(a.) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b.) A bequeaths 40,000 rupees to B, his orphan-niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage. A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.***OF ELECTION.**

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Testator's belief as to his ownership immaterial.

Illustrations.

(a.) The farm of Sultánpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultánpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b.) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(c.) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d.) A, a person of the age of 18, domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

* This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

Bequest for man's benefit how regarded for purpose of election.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Sultánpur Khurd being the property of B, A bequeathed it to C, and bequeathed another farm, called Sultánpur Buzurg, to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultánpur Khurd in opposition to it.

Person deriving benefit indirectly not put to election.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultánpur are settled upon C for life, and, after his death upon D, his only child. A bequeaths the lands of Sultánpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultánpur which accrued after the death of the testator, and before the death of C. In his individual character he retains the lands of Sultánpur in opposition to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

172. A person who, in his individual capacity, takes a benefit under the will, may, in another character, elect to take in opposition to the will.

Illustration.

The estate of Sultánpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultánpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultánpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultánpur during her life.

A by his will bequeaths to his wife an annuity of 200% during her life, in lieu of her interest in the estate of Sultánpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000%. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000%.

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

When acceptance of benefit given by will constitutes election to take under will.

by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of

Illustrations.

(a.) A is owner of an estate called Sultánpur Khurd, and has a life-interest in another estate called Sultánpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(b.) B, the eldest son of A, is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultánpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Presumption arising from enjoyment by legatee for two years.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Confirmation of bequest by act of legatee.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election ;

When testator's representatives may call upon legatee to elect.

and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Effect of non-compliance.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

Postponement of election in case of disability.

PART XXVIII.***OF GIFTS IN CONTEMPLATION OF DEATH.**

Property transferable by gift made in contemplation of death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

A gift is said to be made in contemplation of death where a man who is ill, and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

When gift said to be made in contemplation of death.

Such gift resumable.

Such a gift may be resumed by the giver.

* This Part does not apply to Hindús.—Act XXI. of 1870.

It does not take effect if he recovers from the illness during which it was made ; nor if he survives the person to whom it was made.

When it fails.

Illustrations.

(a.) A, being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

a watch :
a bond granted by C to A :
a bank-note :
a promissory note of the Government of India endorsed in blank :
a bill of exchange endorsed in blank :
certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch :
the debt secured by C's bond :
the bank-note :
the promissory note of the Government of India :
the bill of exchange :
the money secured by the mortgage-deeds.

(b.) A, being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(c.) A, being ill, and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

179. The executor or administrator, as the case may be, of a deceased

Character and property of executor or administrator as such.

person, is his legal representative for all purposes, and all the property* of the deceased person vests in him as such.†

180. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the

Administration with copy annexed of authenticated copy of will proved abroad.

province, whether in the British dominions, or in a foreign country, and a properly authenticated

copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

181. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

182. The appointment may be express or by necessary implication.‡

* This does not include property vested in the deceased as executor or administrator under Act X. of 1865.—12 Beng. 428, 429.

† This section and sections 180—189 (both inclusive), apply to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

‡ 7 Bom., A. C. J., 64 : 7 Beng. 563.

Illustrations.

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law* C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Persons to whom probate cannot be granted.

Grant of probate to several executors simultaneously or at different times.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

185. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

187. No right as executor or legatee can be established in any Court of

Right as executor or legatee when established.

Justice, unless a Court of competent jurisdiction within the province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under the one hundred and eightieth section.

188. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

To whom administration may not be granted.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind ;

nor to a married woman without the previous consent of her husband.

190. No right to any part of the property of a person who has died

Right to intestate's property when established.

intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

* See s. 6, Act XXI., 1870.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.*

192. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship ;

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

195. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.†

Grant of administration to universal or residuary legatee. **196.** When the deceased has made a will, but has not appointed an executor ; or

when he has appointed an executor who is legally incapable, or refuses to act, or has died before the testator, or before he has proved the will ; or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased ;‡

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

197. When a residuary legatee who has a beneficial interest survive^s the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

198. When there is no executor, and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate,† or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

* This section and sections 192—199 (both inclusive) apply to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay —Act XXI. of 1870.

† See s. 6, Act XXI, 1870.

‡ 12 Beng. 423, 427.

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

200. When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

201. If the deceased has left a widow, administration shall be granted to the widow, unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(a.) The widow is a lunatic, or has committed adultery, or has been barred by her marriage-settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(b.) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate:

provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Proviso.

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.*

Right of widower to administration of wife's estate.

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

* 1 Beng., Short Notes of Cases, III.

PART XXX.*

OF LIMITED GRANTS.

(a.) *Grants limited in Duration.*

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

209. When the will has been lost or destroyed, and no copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

210. When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will, or an authenticated copy of it, be produced.

(b.) *Grants for the Use and Benefit of others having Right.*

212. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration, with the will annexed, may be granted to the attorney† of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

213. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the province, letters of administration with the will annexed may be granted to his attorney,† limited as above-mentioned.

214. When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

215. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit,

* So much of this Part as relates to grants of probate and letters of administration with the will annexed applies to wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay. — Act XXI. of 1870.

† The attorney must be within the jurisdiction of the Court. — 4 Beng. App. 49.

until the minor shall have completed the age of eighteen years, at which period, and not before, probate of the will shall be granted to him.

216. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration during minority of several executors or residuary legatees.

217. If a sole executor, or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

Administration for use and benefit of lunatic *jus habens*.

218. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

Administration *pendente lite*.

(c.) *For Special Purposes.*

219. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an attorney to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Probate limited to purpose specified in will.

220. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration with will annexed limited to particular purpose.

221. Where a person dies leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to property in which person has beneficial interest.

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein, and carried into complete execution.

Administration limited to suit.

223. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration, limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator, and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d.) Grants with Exception.

226. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e.) Grants of the Rest.

228. Whenever a grant, with exception of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f.) Grants of Effects unadministered.

229. If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may* be appointed for the purpose of administering such part of the estate.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.*

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.†

(g.) *Alteration in Grants.*

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

233. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h.) *Revocation of Grants.*

Revocation or annulment for just cause.

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause"

Explanation.—Just cause is—

- 1st, that the proceedings to obtain the grant were defective in substance;
- 2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;
- 3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;
- 4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

- (a.) The Court by which the grant was made had no jurisdiction.
- (b.) The grant was made without citing parties who ought to have been cited.
- (c.) The will of which probate was obtained was forged or revoked.
- (d.) A obtained letters of administration to the estate of B as his widow, but it has since transpired that she was never married to him.
- (e.) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (f.) Since probate was granted, a later will has been discovered.
- (g.) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.
- (h.) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

* 12 Beng. 428 : see Act XXI. of 1870, s. 6.

† See Act XXI. of 1870, s. 6.

PART XXXI.*

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND
LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

235. The District Judge shall have jurisdiction in granting and revoking† probates and letters of administration in all cases within his district.

235A.† The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court

237. The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same ;

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending, or in not answering such questions, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default, and the costs of the proceeding shall be in the discretion of the Judge.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated so far as the circumstances of the case will admit by the Code of Civil Procedure.

239. Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate is

* So much of this Part as relates to grants of probate and letters of administration with the will annexed applies to the wills of Hindus, &c, in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

† 2 N. W. P. 268.

‡ See Act VI. 1881, s. 2.

authorized and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

240. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment, it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

241A.* Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death, resided within the jurisdiction of such Delegate.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

† Provided that probates and letters of administration granted by a High Court after the first day of April, 1875, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

242A.† Whenever a grant of probate or letters of administration is made by a High Court with such effect as last aforesaid, the Registrar, or such other officer as the High Court making the grant appoints in this behalf, shall send to each of the other High Courts a certificate to the following effect:—

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at _____ day of _____ 187____, hereby certify that on the _____, the High Court of Judicature at _____ [*or as the case may be*] granted probate of the will [*or letters of administration of the estate*] of *C. D.*, late of _____, deceased, to *E. F.*, of _____, and *G. H.*, of _____, and that such probate

* See Act VI. of 1881, s. 3.

† See Act XIII. of 1875.

[or letters] has [or have] effect over all the property of the deceased throughout the whole of British India ;

and such certificate shall be filed by the High Court receiving the same.

243. The application for probate or letters of administration, if made conclusively of application and verified in the manner hereinafter mentioned, for probate or administration, shall be conclusive for the purpose of authorizing if properly made and verified. the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating the time of the testator's death, that the writing annexed is his last will and testament, that it was duly executed, and that the petitioner is the executor therein named ; and in addition to those particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, moveable or immovable, situate within the jurisdiction of the Judge ; "and when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate."*

245. In cases wherein the will is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or if by person other than Court-translator the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—
"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death, the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims, that the deceased left some property within the jurisdiction of the District Judge "or District Delegate,"† to whom the application is made, and the amount of assets which are likely to come to the petitioner's hands ;

"and when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate."‡

* See Act VI. of 1881, s. 4.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

‡ This paragraph has been added by Act VI. of 1881, s. 4.

246A.* Every person applying to a High Court for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other High Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid ;

or, where any such application has been made, the High Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the High Court to which any application is made under the proviso to section 242 of this Act may, if it think fit, reject the same.

247. The petition for probate or letters of administration shall, in all cases, be subscribed by the petitioner and his pleader (if any), and shall be verified by the petitioner in the following manner or to the like effect :—

“ I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief ”

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following :—

“ I (C. D.), one of the witnesses to the last will and testament of the testator mention in the above petition, declare that I was present, and saw the said testator affix his signature (or mark) thereto (*as the case may be*), (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence). ”

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

250. In all cases it shall be lawful for the District Judge “ or District Delegate,”† if he shall think proper,

to examine the petitioner in person, upon oath or solemn affirmation, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge “ or District Delegate ”† issuing the same may direct.

* See Act XIII of 1875

† The words quoted have been inserted by Act VI of 1881, s 9.

251.* Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge, and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

252. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at , without notice to *C. D.*, of ."

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge "or officer"† to whom the application has been made "or notice has been given of its entry with some other Delegate,"‡ until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

253A.‡ A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

253B.‡ In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

253C.‡ In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the

* This section has been substituted for the one originally enacted by Act VI. of 1881, s. 5.

† The words quoted have been inserted by Act VI. of 1881, s. 6.

‡ Sections 253A, 253B, and 253C, have been inserted by Act VI. of 1881, s. 7.

District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

254. When it shall appear to the Judge "or District Delegate"* that Grant of probate to be probate of a will should be granted, he will grant under seal of Court. the same under the seal of his Court in manner following:—

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)], † hereby make known that on the _____ day of _____, in the year _____, the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named, by having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof."

255. And whenever it shall appear to the District Judge "or District Delegate"* that Grant of letters of administration to be under seal of Court. letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following:—

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)], † hereby make known that on the _____ day of _____ letters of administration (with or without the will annexed, as the case may be), of the property and credits of _____, late of _____, deceased, were granted to _____, the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof."

256. Every person to whom any grant of administration shall be committed shall give a bond to the Judge of the Administration-bond. District Court to enure for the benefit of the Judge for the time being, with one more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall, from time to time, by any general or special order, direct.

257. The Court may, on application made by petition, and on being Assignment of administration-bond. satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead

* The words quoted have been inserted by Act VI. of 1881, s. 9.

† The words in brackets have been inserted by Act VI. of 1881, s. 8.

of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

258. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

259. Every District Judge "or District Delegate"* shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him among the records of his Court, until some public registry for wills is established; and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

261. In any case before the District Judge in which there is contention,† the proceedings shall take, as nearly as may be, the form of a regular suit according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

262. Where any probate is or letters of administration are revoked, all payment *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

* The words quoted have been inserted by Act VI. of 1881, s. 2.

† See 2 N. W. P. 268.

PART XXXII.*

OF EXECUTORS OF THEIR OWN WRONG.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor of his own wrong. executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions. First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

Illustrations.

(a.) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b.) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(c.) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.†

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

268. All demands whatsoever, and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

* This Part does not extend to Hindús, Jains, Sikhs, or Buddhists.—Act XXI. of 1870.

† So far as it relates to an executor and an administrator with the will annexed, this Part applies to the wills of Hindús, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

Illustrations.

(a.) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b.) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of property.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.

(a.) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(b.) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

270. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

Powers of several executors or administrators, exercisable by one.

Illustrations.

(a.) One of several executors has power to release a debt due to the deceased.

(b.) One has power to surrender a lease.

(c.) One has power to sell the property of the deceased, moveable or immoveable.

(d.) One has power to assent to a legacy.

(e.) One has power to endorse a promissory note payable to the deceased.

(f.) The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

272. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

273. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

Powers of administrator during minority.

274. An administrator during minority has all the powers of an ordinary administrator.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

PART XXXIV.*

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

276. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral.

277. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in the manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

277A.† In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration after the first day of April, 1875, to the effects of any person dying in British India, and leaving property in more than one province, shall include in the inventory of the effects of the deceased his moveable or immoveable property situate in each of the provinces:

And the value of such property situate in the said provinces, respectively, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby, wheresoever situate within British India.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased, and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan, or domestic servant, are next to be paid, and then the other debts of the deceased.

Wages for certain services to be next paid, and then other debts.

* So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindús, &c., on or after 1st September 1870, in the Lower Provinces, and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

† See Act XIII. of 1875, s. 5.

Save as aforesaid, all debts to be paid equally and rateably.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

But the executor or administrator shall pay all such debts* as he knows† of, including his own, equally and rateably,‡ as far as the assets of the deceased will extend.

Application of moveable property to payment of debts, where domicile not in British India.

283. If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 10,000 rupees, immoveable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the moveable estate, and proceeds of the immoveable estate are to be applied, as far as they will extend, towards the discharge of the debts not under seal. Accordingly, one-half of the amount of the debts not under seal is to be paid out of the proceeds of the immoveable estate.

284. No creditor who has received payment of a part of his debts by virtue of the last preceding section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

286. If the estate of the deceased is not bound to pay legacies without indemnity.

287. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

285. Debts of every description must be paid before any legacy.

of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

* A liability to pay calls is a debt.—8 Bomb., O. C. J., 20.

† i.e., actually, not constructively.—8 Bomb., O. C. J., 20.

‡ 8 Bomb., O. C. J., 20.

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legatee in preference to another. Executor not to pay one legatee in preference to another. legacy to himself or to any person for whom he is a trustee.

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement. Non-abatement of specific legacy when assets sufficient to pay debts.

289. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder. Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the letter rateably in proportion to their respective amounts. Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

291. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies. Legacies treated as general for purpose of abatement.

PART XXXV.*

OF THE EXECUTOR'S ASSENT TO A LEGACY.

292. The assent of the executor is necessary to complete a legatee's title to his legacy. Assent necessary to complete legatee's title.

Illustrations.

(a.) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b.) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

293. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way. Effect of executor's assent to specific legacy.

* So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindús, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(a.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b.) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c.) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d.) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e.) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

294. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a.) A bequeaths to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall, within a limited time, pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee, and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house, or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

296. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(a.) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b.) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.*

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

298. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the commencement of annuity when no time fixed by will. testator's death, and the first payment shall be made at the expiration of a year next after that event.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

PART XXXVII.*

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall, at the end of the year, be invested in such securities as the High Court may, by any general rule to be made, from time to time authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

303. Where an annuity is given, and no fund is charged with its payment, or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased; or,

Procedure when no fund charged with, or appropriated to, annuity.

* So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindus &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made, from time to time, authorize or direct.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities shall be converted into money and invested in such securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

307. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit;

and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom "or by whose District Delegate,"* the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards;

and if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account, and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

* The words quoted have been inserted by Act VI. of 1881, s. 8.

PART XXXVIII.*

OF THE PROCEDURE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

309. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B

(b.) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

310. The legatee under a general residuary bequest is entitled to the

Residuary legatee's title to produce of the residuary fund from the testator's produce of residuary fund. death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a.) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeaths the residue of his property to A, when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

311. Where no time has been fixed for the payment of a general legacy,

Interest when no time fixed interest begins to run from the expiration of one for payment of general legacy. year from the testator's death.

Exceptions.—(1.) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

* So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindus, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.
Interest when time fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

313. The rate of interest shall be four per cent. per annum.
Rate of interest.

314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.
No interest on arrears of annuity within first year after testator's death.

315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.
Interest on sum to be invested to produce annuity.

PART XXXIX.*

OF THE REFUNDING OF LEGACIES.

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.
Refund of legacy paid under Judge's orders.

317. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.
No refund if paid voluntarily.

318. When the time prescribed by the will for the performance of a condition has elapsed without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed, under the one hundred and twenty-fourth section, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.
Refund when legacy becomes due on performance of condition within further time allowed under section 124.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.
When each legatee compellable to refund in proportion.

320. Where an executor or administrator has given such notices as would have been given by the High Court in an administration-suit for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the
Distribution of assets.

* So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindus, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay,—Act XXI. of 1870, s. 2.

expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of of such distribution ;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

321. A creditor who has not received payment of his debt may* call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Within what period creditor may call upon legatee to refund.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent ; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

325. The refunding shall, in all cases, be without interest.

326. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

* See Act XV. 1877.

PART XL.*

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

MISCELLANEOUS.

329. [*Repealed by Act VII. of 1870.*]

330. [*Repealed by Act XXIV. of 1867.*]

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindú,† Muhammadan, or Buddhist,† nor shall they apply to any will made, or any intestacy occurring, before the first day of January 1866.

The fourth section shall not apply to any marriage contracted before the same day.

332. The Governor-General of India in Council shall, from time to time, have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect, or tribe in British India, or any part of such race, sect,† or tribe, to whom he

* So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindús, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

† Now see Act XXI. of 1870. See, too, 2 Beng., O. C. J., 79.

‡ Under this section Native Christians in the province of Coorg have been exempted from the provisions of the Succession Act retrospectively from the 16th March 1865.—*Gazette of India*, July 25, 1868, p. 1094.

may consider it impossible or inexpedient to apply the provisions of this Act or of the part of the Act mentioned in the order.

The Governor-General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the *Gazette of India*.

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THE MOFUSSIL SMALL CAUSE COURTS ACT, NO. XI. OF 1865.*

RECEIVED THE G.-G.'s ASSENT ON THE 15TH MARCH 1865.

An Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature.

WHEREAS it is expedient to consolidate and amend the law relating to
Preamble. Courts of Small Causes beyond the local limits of
the ordinary original civil jurisdiction of the High
Courts of Judicature ; It is enacted as follows :—

Interpretation-clause. 1. In this Act, unless there be something repugnant in the subject or context—

Words importing the singular number include the plural, and words importing the plural number include the singular :

Words importing the masculine gender include females :

"Judge" includes an Acting Judge :

"Section" means a section of this Act :

"Court of Small Causes" means a Court constituted under this Act :

And, in every part of British India in which this Act operates, "Local Government" denotes the person authorized to administer the executive government in such part, and

"High Court" denotes the highest Civil Court of appeal having jurisdiction therein.

2.† Any Courts of Small Causes now in existence, which shall have been constituted under Act No. XLII. of 1860, shall be considered as constituted under this Act within the territorial limits of the jurisdiction assigned to such Courts under the said Act XLII. of 1860, or which may hereafter be assigned to them under the next following section, and shall be subject to all the provisions contained herein.†

3. The Local Government‡ may, with the previous sanction of the Governor-General of India in Council, constitute, for the trial of suits under this Act, Courts of Small Causes, with such establishment of officers as may be necessary, at any places within the territories under such Government.

Whenever a Court of Small Causes shall be so constituted, the Local Government shall fix the territorial limits of the jurisdiction of such Court, and may, from time to time, alter the limits so fixed.

The Local Government may abolish any Court of Small Causes.

* Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874.

† See Act XIV. of 1870.

‡ This does not include a Chief Commissioner, 6 Beng 201. But in Burma now see the Burma Courts Act.

4. Every Court of Small Causes shall use a seal bearing the following inscription in English and in the language of the Court—"Court of Small Causes of _____,"—and shall be subject to the general control and orders of the High Court.

5. Courts of Small Cause shall be held at such place or places within the local limits of their respective jurisdiction as shall, from time to time, be appointed by the Local Government.

6. The following are the suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of five hundred rupees, whether on balance of account or otherwise:

Provided that no action shall lie in any such Court—

(1) on a balance of partnership-account, unless the balance shall have been struck by the parties or their agents:

(2) for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will;

(3) for the recovery of damages on account of an alleged personal injury, unless actual pecuniary damage shall have resulted from the injury.

(4) for any claim for the rent of land or other claim for which a suit may now be brought before a revenue-officer, unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears.

7. The Local Government may extend the jurisdiction of any Court of Small Causes in suits of the nature described in the last preceding section, and thereby made cognizable by Courts of Small Causes, to an amount not exceeding one thousand rupees.

8 to 11.—[Repealed by Act X. of 1877.]

12. Whenever a Court of Small Causes is constituted under this Act, no suit cognizable by such Court shall be heard or determined in any other Court having jurisdiction within the local limits of the jurisdiction of such Court of Small Causes:

Provided that nothing in this Act shall be held to take away the jurisdiction which a Magistrate, or a person exercising the powers of a Magistrate, or an Assistant or Deputy Magistrate, can now exercise in regard to debts or other claims of a civil nature;

or the jurisdiction which can be exercised by village-munsifs or village-pancháyats* under the provisions of the Madras Code;

or by military Courts of Requests, or by Cantonment Joint Magistrates invested with civil jurisdiction under Act III. of 1859 (for conferring civil jurisdiction in certain cases upon Cantonment Joint Magistrates);*

* See Act XII. of 1876.

or by a single officer duly authorized and appointed under the rules in force in the Presidencies of Madras and Bombay respectively, for the trial of small suits in military bázárs, in cantonments, and stations occupied by the troops of those Presidencies respectively.*

13. Every Court of Small Causes shall (except as hereinafter provided) be held before a Judge appointed by the Local Government, and who shall receive such salary as the Governor-General of India in Council may, from time to time, determine.

Such Judge shall be Judge either of one such Court or of two or more such Courts as the Local Government shall appoint.†

14. It shall be lawful for any Judge who is the Judge of two or more Courts of Small Causes to fix, subject to the orders of the Local Government, or, in territories under the immediate administration of the Government of India, of the Chief Commissioner or other principal civil authority, the times at which he will go on circuit, and the dates on which his sittings in the several Courts of which he is Judge shall commence.

Notice of such times and dates shall be published in the official Gazette and at such places and in such manner as the Local Government or Chief Commissioner or other authority as aforesaid shall think fit to direct in that behalf.

15. The Local Government may, from time to time, invest any person with the powers of a Judge of a Court of Small Causes under this Act for a limited period or for specific periods in each year only, and declare in what Court or Courts of Small Causes such powers shall be exercised by such person.

Any person so invested shall, in all Courts in which the Local Government shall have declared that he shall exercise the said powers, have all such powers as might in such Courts be exercised by a Judge of the said Courts appointed under the thirteenth section.

16. If it shall be declared by the Local Government that any person invested under the last preceding section with the powers of a Judge of a Court of Small Causes shall exercise those powers in a Court of which there is a Judge appointed under the thirteenth section, the person so invested shall exercise a jurisdiction concurrent with that of such Judge.

The Local Government shall, from time to time, make rules to provide for the distribution of business between any person so invested and any Judge in whose Court it may be declared that such person shall exercise his powers, and generally for regulating and defining the duties and relative positions of Judges of Courts of Small Causes and persons so invested as aforesaid:

Provided always that no such rule shall be in any way inconsistent with the provisions of this Act.

* So much of this section as relates to the trial of small suits in military bázárs, cantonments, and stations in the Madras Presidency, has been repealed by Act XII. of 1876.

† See Act X. of 1877, s. 99.

Remuneration of Judges and of persons invested with powers and restriction from practising within the limits.

17. Every person invested with the powers of a Judge of a Court of Small Causes under the fifteenth section shall receive such remuneration as the Governor-General in Council shall, from time to time, determine.

It shall not be lawful for any such person to practise as a barrister, attorney, vakil, pleader, or law-agent in any district or place within the territorial limits of which he is empowered to exercise the powers with which he is invested.

18. In all suits under this Act the summons to the defendant shall be for the final disposal of the suit, and no written statement other than the plaint shall be received unless required by the Court.

19.—[*Repealed by Act X. of 1877, s. 99.*]

20. In the execution of a decree under this Act, if, after the sale of the moveable property of a judgment-debtor, any portion of a judgment-debt shall remain due, and the holder of the judgment desire to issue execution upon any immovable property belonging to the judgment-debtor, the Court, on the application of the holder of such judgment, shall grant him a copy of the judgment and a certificate of any sum remaining due under it ;

and on the presentation of such copy and certificate to any Court of Civil Judicature having general jurisdiction in the place in which the immovable property of the judgment-debtor is situate, such Court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases.

Decisions final.

21. In suits tried under this Act, all decisions and orders of the Court shall be final :

Provided that in any case in which a decree shall be passed *ex parte* against a defendant, he may, within thirty days after any process for enforcing the decree has been executed, give notice to the Court by which the decree was passed, of his intention to apply to the Court at its next sitting for an order to set it aside :

and if, on the application being made to the Court at its next sitting,

When such decree may be set aside. it shall be proved to the satisfaction of the Court that the summons was not duly served, or that

the defendant was prevented by any sufficient cause from appearing when the suit was heard, the Court shall pass an order setting aside the decree, and shall appoint a day for proceeding with the suit, upon such terms as to costs or otherwise as shall to the Court seem proper :

Provided also that it shall be competent to the Court, if it shall think fit, in any case not falling within the proviso last aforesaid, to grant a new trial, if notice of the intention to apply for the same at the next sitting of the Court be given to the Court within the period of seven days from the date of the decision, and if the same be applied for at the next sitting of the Court ;

but no such new trial shall be granted where the party applying for

the same is the defendant or one of the defendants, unless he shall, with his notice of application, deposit in Court the amount for which a decree shall have been passed against him, including the costs (if any) of the opposite party.

22 to 28.—[*Repealed by Act X. of 1877.*]

29. Whenever more Courts than one are constituted in any district under this Act, the Local Government may appoint one of the same Courts to be the principal Court of Small Causes in such district.

30. The Judge of the principal Court of Small Causes in any district may sit with the Judge of any other Court of Small Causes in the same district, or with a person invested with the powers of a Judge as aforesaid in such Court, for the trial and determination of any suit cognizable under this Act,

and shall so sit for the trial and determination of any such suit which the Judge of such other Court or other person as aforesaid may reserve for trial by himself and the Judge of the principal Court of Small Causes.

31. The Local Government may, from time to time, make rules providing that, in such cases as shall be prescribed in such rules, two Judges, or a Judge and a person invested with the powers of a Judge as aforesaid, shall sit together, and hear and dispose of suits and applications.

32. If two Judges, or a Judge and a person invested with the powers of a Judge as aforesaid, sit together, and they concur in the decision or order to be passed, such decision or order shall be the decision or order of the Court ;

but if they shall differ on a point of law, or usage having the force of law, or in construing a document, the construction of which may affect the merits of the decision, they shall submit a case for the opinion of the High Court on the point of difference between them ; *

and the provisions applicable to a reference to the High Court* shall be applicable to every reference made under this section.

33. If two Judges differ on any matter other than the matters above-mentioned, the Judge who is senior in respect of date of appointment as a Judge of a Court of Small Causes shall have the casting voice.

34. If a Judge and a person invested with the powers of a Judge as aforesaid differ on any matter other than the matters above-mentioned, the Judge shall have the casting voice.

35. It shall be lawful for the Local Government to appoint to any Court of Small Causes an officer, who shall be called the Registrar of the Court, and who shall be paid such salary as shall, from time to time, be authorized in that behalf by the Governor-General of India in Council.

36. The Registrar of every Court of Small Causes shall be the chief ministerial officer of the Court.

In addition to any other duties and powers herein imposed or conferred upon the Registrar, he shall, subject to the provisions contained in the next following section,

* See Act X, of 1877.

receive all plaints presented to the Court ;
 issue notice of suit to the defendants ;
 receive any documents which the parties may wish to put in ; and
 issue process for the attendance of their witnesses.

He shall likewise keep lists of all causes coming on for trial, and fix such days for their being heard respectively, as may seem to him fit.

He may also receive notices under the twenty-first section.

37. If, when the Judge is absent on duty, and there is no person invested with the powers of a Judge as aforesaid,

When Registrar may reject defective plaint.

the Registrar shall be of opinion that any plaint presented to the Court is defective in any of the particulars mentioned in sections twenty-seven to thirty-two, both inclusive, of the Code of Civil Procedure, he may reject the same.

But it shall be lawful for the Judge, or for any person invested with the powers of a Judge as aforesaid, to reject any plaint which may have been received by the Registrar, and to receive any plaint which may have been rejected by him :

Provided that such reception or rejection (as the case may be) by the Registrar shall, in the opinion of such Judge or other person empowered as aforesaid, have been erroneous, and that an application to set the same aside shall be made at the first subsequent sitting in the said Court of a Judge or other person duly empowered as aforesaid.

Proviso.

38. If a suit shall have been instituted in a Court of Small Causes, and the defendant shall have been duly summoned to appear and answer therein, and if, before the day appointed for the hearing of such suit, the defendant or his agent duly authorized in that behalf shall appear before the Registrar of the Court, and admit the plaintiff's claim, and apply for leave to confess judgment, it shall be lawful for the Registrar, if the Judge be absent on duty, and there be no person invested with the powers of a Judge as aforesaid, to enter on the record a decree for the plaintiff by confession, and such decree shall have the like force and effect as a decree for the plaintiff would have had if the suit had been heard by the Judge and a decree passed by him for the plaintiff :

Provided that in every case, before passing a decree under this section, it shall be the duty of the Registrar fully to satisfy himself of the service of the summons, of the identity of the parties, and of their good faith in appearing before him.

Proviso.

39. The Registrar, if the Judge be absent on duty, and there be no person invested with the powers of a Judge as aforesaid, shall also receive applications for the execution of decrees passed by the Judge, or other person empowered as aforesaid, of the Court of which he is the Registrar, and, subject to any orders which he may receive from the Judge or such other person, shall execute such decrees in the same manner as the Judge might execute them.

No appeal shall lie from any order passed by the Registrar under this section ; but the Judge or other person empowered as aforesaid may, within three calendar months from the making of the order, of his own motion reverse or modify it.

Bar of appeal. Reversal by Judge.

40. The Local Government may invest any Registrar with the powers of a Judge of a Court of Small Causes in suits arising within the local limits of the jurisdiction

Power to invest Registrar with Judge's powers.

of the Court of which he is the Registrar, provided that the amount or value of the claim shall not exceed twenty rupees.

The Registrar shall exercise such powers subject to the general control of the Judge, or, when there is no Judge, of any person invested with the powers of a Judge as aforesaid.

41. The suits cognizable by the Registrar under the last preceding section shall be set down for hearing before such Registrar, and he shall hear and determine such suits, and execute the decrees made therein, in such manner in all respects as the Judge of the Court might hear, determine, and execute the same respectively :

Provided that the Judge, or, when there is no Judge, the person invested with the powers of a Judge, whenever he thinks proper, may transfer to his own file any suit on the file of the Registrar, and may hear and determine the same.

42.—[*Repealed by Act X. of 1877.*]

43. A decree passed by a Registrar under the thirty-eighth section may be set aside by the Judge of the Court, or, when there is no Judge, by the person invested with the powers of a Judge as aforesaid, in such manner and on such grounds only as it might be set aside if it were a decree passed at the hearing of the cause by the Judge or other person empowered as aforesaid.

44. An officer, to be styled the clerk of the Court, may be appointed to any Court of Small Causes on such salary as shall be authorized by the Governor-General of India in Council.

The appointment and removal of such officer shall rest with the Court, subject to the approval of the Local Government, or, in territories under the immediate administration of the Government of India, of the Chief Commissioner, or other principal civil authority.

The Registrar of any Court of Small Causes may also be the clerk of the Court.

45. When a clerk is appointed to any Court of Small Causes, such clerk shall, subject to the orders of the Court and of the Registrar if there be a Registrar, issue all summonses, warrants, orders, and writs of execution, and keep an account of all proceedings of the Court, and shall take charge of, and keep an account of, all monies payable or paid into or out of Court, and shall enter an account of all such monies in a book belonging to the Court to be kept by such clerk for that purpose.

46. The High Court shall have power to make and issue general rules for regulating the practice and proceedings of Courts of Small Causes, and also to prescribe forms for every proceeding in the said Courts for which it shall think that forms should be provided, and for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form ; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law for the time being in force.

47.—[*Repealed by Act X. of 1877.*]

48. Nothing in the second section of the said Act No. III. of 1859, or the sixth, seventh, and eighth sections of Act No. XXII. of 1864 (to make provision for the

Administration of Military Cantonments), relating to the establishment of Courts of Small Causes in military cantonments, shall be held to affect so much of Act No. XI. of 1841 (*for consolidating and amending the Regulations concerning Military Courts of Requests for Native Officers and Soldiers in the service of the East India Company*) as declares that, in places beyond the frontier of the territories of the East India Company, actions of debt and other personal actions may be brought before the Military Courts therein mentioned, against persons so amenable as therein mentioned, for any amount of demand.

49. Nothing in this Act, nor in the sixth, seventh, and eighth sections Saving of jurisdiction of of the said Act XXII. of 1864, shall be held to Courts of Requests. affect the jurisdiction of any Court of Requests convened under the hundred and third section of the Statute 27 Vic., cap. 3, or the corresponding section in any other Statute for the time being in force, for punishing mutiny and desertion, and for the better payment of the army and their quarters, or the powers of a commanding officer under any such Statute to assemble such Courts.

50. When, in any Act passed prior to the coming into operation of this Act, reference is made to Act XLII. of 1860, Reference in previous Acts to Act XLII. of 1860 to be read as applying to this Act. such reference shall be read as applying to this Act; and when any procedure is directed to be in accordance with the provisions of Act XLII. of 1860, such procedure shall be deemed to be directed to be in accordance with the provisions of this Act.*

51. Whenever the state of business in any Court of Small Causes, the Power to give Small Cause Court Judge powers of Principal Sadr Amin or Magistrate. Judge of which shall be the Judge of such Court only, is not sufficient to occupy his time fully, the Local Government may invest him within such limits as it shall from time to time appoint, in addition to his powers as such Judge, with the powers of a Magistrate as defined in the Code of Criminal Procedure, or, in the Regulation Provinces, with the powers of a† Principal Sadr Amin, or, in the Non-Regulation Provinces, with the powers of an officer exercising the like or nearly the like powers as those of a† Principal Amin.

52. In the places in which the provisions of Act X. of 1859‡ (*to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal*) are in force, the Local Government may empower any Judge of a Court of Small Causes to hear and determine, under the rules contained in the said Act X. of 1859‡ applicable to trials before a Collector, and subject to the same regular and special appeal, the claims cognizable under such Act arising within the local limits of the jurisdiction of such Court.

Any Judge so empowered shall exercise all the powers of a Collector under the said Act X. of 1859,‡ except the power of hearing appeals.

53. Courts of Small Causes shall comply with such requisition as may from time to time be made by the Local Government or the High Court, for records, returns, and statements in such form and manner as such Government or Court may deem proper.

* See Act X. of 1863, s. 1 (repealed by Act XIX. of 1867): Act IV. of 1864 (repealed by Act VIII. of 1868): Act XXII. of 1864, s. 44: Bengal Act II. of 1862, s. 2 (repealed by Act XII. of 1873): Madras Act IV. of 1863 (repealed by Act III. of 1873): Bombay Act VIII. of 1863 (repealed by Act XII. of 1873).

† See, in Bengal, Act VI. of 1871, s. 30, and, in Madras, Act III. of 1873, s. 29.

‡ In the North-Western Provinces, for "Act X. of 1859," the words and figures "the North-Western Provinces Rent Act, 1881," should be substituted.

THE PARSI SUCCESSION ACT.

NO. XXI. OF 1865.

RECEIVED THE G.-G.'s ASSENT ON THE 10TH APRIL 1865.

*An Act to define and amend the Law relating to Intestate Succession among the Pársis.**

WHEREAS it is expedient to define and amend the law relating to intestate succession among the Pársis ; it is enacted
Preamble. as follows :—

1. Where a Pársi dies leaving a widow and children, the property of which he shall have died intestate shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter.

Division of property among widow and children of intestate.

2. Where a female Pársi dies leaving a widower and children, the property of which she shall have died intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children.

Division of property among widower and children of intestate.

3. When a Pársi dies leaving children, but no widow, the property of which he shall have died intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter.

Division of property amongst children of male intestate leaving no widow.

4. When a female Pársi dies leaving children, but no widower, the property of which she shall have died intestate shall be divided amongst the children in equal shares.

Division amongst children of female intestate leaving no widower.

5. If any child of a Pársi intestate shall have died in his or her lifetime, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death.

Division of predeceased child's share among widow or widower and issue of such child.

6. Where a Pársi dies leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property as to which he or she shall have died intestate, and the widow or widower shall take the other moiety.

Division of property when intestate leaves widow or widower, but no lineal descendants.

Where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother.

* Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874.

Where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side, in the order specified in the first schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the intestate.

The next-of-kin standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same decree of propinquity.

If there be no relatives on the father's side, the intestate's widow or widower shall take the whole.

7. When a Pársi dies leaving neither lineal descendants nor a widow or widower, his or her next-of-kin, in the order set forth in the second schedule here to annexed, shall be entitled to succeed to the whole of the property as to which he or she shall have died intestate.

Division of property when intestate leaves neither widow nor widower nor lineal descendants.

The next-of-kin standing first in the same schedule shall always be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

8. The following portions of the Indian Succession Act, 1865, shall not apply to Pársis (that is to say) the whole of Part III., the whole of Part IV. excepting section 25, the whole of Part V., and section 43.

Exemption of Pársis from parts of Indian Succession Act, 1865.

THE FIRST SCHEDULE.

- (1.) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate.
- (2.) Grandfather and grandmother.
- (3.) Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.
- (4.) Great-grandfather and great-grandmother.
- (5.) Great-grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

THE SECOND SCHEDULE.

- (1.) Father and mother.
- (2.) Brothers and sisters and the lineal descendants of such of them as shall have predeceased the intestate.
- (3.) Paternal grandfather and paternal grandmother.
- (4.) Children of the paternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
- (5.) Paternal grandfather's father and mother.
- (6.) Paternal grandfather's father's children, and the lineal descendants of such of them as shall have predeceased the intestate.

- (7.) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (8.) Maternal grandfather and maternal grandmother.
 - (9.) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (10.) Son's widow, if she had not re-married at or before the death of the intestate.
 - (11.) Brother's widow, if she had not re-married at or before the death of the intestate.
 - (12.) Paternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.
 - (13.) Maternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.
 - (14.) Widowers of the intestate's deceased daughter's if they have not re-married at or before the death of the intestate.
 - (15.) Maternal grandfather's father and mother.
 - (16.) Children of the maternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (17.) Paternal grandmother's father and mother.
 - (18.) Children of the paternal grandmother's father, and the lineal descendants of such of them as shall have predeceased the intestate.
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THE GENERAL CLAUSES ACT.

NO. I. OF 1868.

RECEIVED THE G.-G.'S ASSENT ON THE 3RD JANUARY 1868.

An Act for shortening the language used in Acts of the Governor-General of India in Council and for other purposes.

WHEREAS it is expedient to shorten the language used in Acts made by the Governor-General of India in Council, and to make certain provisions relating to such Acts ; It is hereby enacted as follows :—

Preamble.

Short title.

1. This Acts may be cited as "The General Clauses' Act, 1868."

Interpretation-clause.

2. In this Act and in all Acts made by the Governor-General of India in Council after this Act shall have come into operation,—unless there be something repugnant in the subject or context,—

(1.) Words importing the masculine gender shall be taken to include females ;

(2.) Words in the singular shall include the plural, and *vice versa* ;

(3.) "Persons" shall include any company, or association, or body of individuals, whether incorporated or not ;

(4.) "Year" and "month" shall respectively mean a year and month reckoned according to the British calendar ;

(5.) "Immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth ;

(6.) "Moveable property" shall mean property of every description, except immoveable property ;

(7.) "Her Majesty" shall include Her heirs and successors to the Crown ;

(8.) "British India" shall mean the territories for the time being vested in Her Majesty by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better government of India*), other than the Settlement of Prince of Wales's Island, Singapore, and Malacca ;

(9.) "Government of India" shall denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively ;

(10.) "Local Government" shall mean the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner ;

(11.) "High Court" shall mean the highest Civil Court of appeal in such part ;

(12.) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction ; but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction ;

(13.) "Magistrate" shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure ;

(14.) "Barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland ;

(15.) "Section" shall denote a section of the Act in which the word occurs;

(16.) "Will" shall include a codicil and every writing making a voluntary posthumous distribution of property;

(17.) "Oath," "swear," and "affidavit" shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

(18.) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

(19.) And in the case of any one whose personal law permits adoption, "son" shall include an adopted son, and "father" an adoptive father.

3. In all Acts made by the Governor-General of India in Council after this Act shall have come into operation—

(1) for the purpose of reviving, either wholly or partially, a Statute, Act, or Regulation repealed, it shall be necessary expressly to state such purpose;
Revival of repealed enactments.

(2) for the purpose of excluding the first in a series of days or any other period of time, it shall be sufficient to use the word "from;"
Commencement of time.

(3) for the purpose of including the last in a series of days or any other period of time, it shall be sufficient to use the word "to;"
Termination of time.

(4) for the purpose of expressing that a law relative to the chief or Official chiefs and subordinates. superior of an office shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, it shall be sufficient to prescribe the duty of the superior;

(5) for the purpose of indicating the relation of a law to the successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations; and
Successors.

(6) for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed.
Substitution of functionaries.

4. Whenever, by any Act or Regulation now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, Deputy may be taken *pro*- in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure, or value, of any goods or merchandize, a like duty shall be leviable according to the same rate on any greater or less quantity.

5. The provisions of sections sixty-three to seventy, both inclusive, of the Indian Penal Code, and of section three hundred and seven* of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary.
Recovery of fines.

6. The repeal of any Statute, Act, or Regulation, shall not affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings† commenced, before the repealing Act shall have come into operation.
Matters done under enactment before its repeal unaffected.

* See section 2 and schedule v. of Act X. of 1872.

† This includes a suit in which a decree has been given.—6 Bom., A. C. J., 169.

THE COURT FEES' ACT, NO. VII. OF 1870.

RECEIVED THE G.-G.'s ASSENT ON THE 11TH MARCH 1870.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Court Fees' Act, 1870 :"

Extent of Act.

It extends to the whole of British India ;

Commencement of Act.

And it shall come into force on the first day of April 1870.

2.—[*Repealed by Act XIV. of 1870.*]

CHAPTER II.

FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY TOWNS.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by Statute twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, section fifteen, or chargeable in each of such Courts under No. eleven of the first, and Nos. seven, twelve, fourteen, sixteen, twenty, and twenty-one of the second, schedule to this Act annexed ;

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency-towns and their several offices ;

shall be collected in manner hereinafter appearing.

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction ;

or in the exercise of its extraordinary original criminal jurisdiction ;
or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a Division Court ;

In their appellate jurisdiction. or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence ;

As Courts of reference and revision. or in the exercise of its jurisdiction as a Court of reference or revision ;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

5. When any difference arises between the officer whose duty it is to

Procedure in case of difference as to necessity or amount of fee.

see that any fee is paid under this chapter, and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

6. Except in the Courts hereinbefore mentioned, no document of any of

Fees on documents filed, &c., in mufassal Courts or in public offices.

the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Computation of fees payable in certain suits :

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :—

i. In suits for money for money :

(including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically) — according to the amount claimed :

ii. In suits for maintenance and annuities or other sums payable for maintenance and annuities :

periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year :

iii. In suits for moveable property for other moveable property having a market-value :

where the subject-matter has a market-value—according to such value at the date of presenting the plaint :

iv. In suits—

for moveable property of no market-value :

(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property :

(b) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and
consequential relief :
for an injunction :
for easements :
for accounts :

(c) to obtain a declaratory decree, or order,
where consequential relief is prayed,
(d) to obtain an injunction,
(e) for a right to some benefit (not herein
otherwise provided for) to arise out of land, and
(f) for accounts—

according to the amount at which the relief sought is valued in the
plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values
the relief sought, and the provisions of the Code of Civil Procedure, section
thirty-one, shall apply as if, for the word 'claim,' the words 'relief sought'
were substituted.

v. In suits for the possession of land, houses, and gardens—according
for possession of land, to the value of the subject-matter; and such value
houses, and gardens : shall be deemed to be—

where the subject-matter is land, and—

(a) where the land forms an entire, or a definite share of an estate,
paying annual revenue to Government,
or forms part of such an estate, and is recorded in the Collector's
register as separately assessed with such revenue,
and such revenue is permanently settled—
ten times the revenue so payable :

(b) where the land forms an entire estate, or a definite share of an
estate paying annual revenue to Government, or forms part of such estate,
and is recorded as aforesaid ;

and such revenue is settled, but not permanently—

five times the revenue so payable :

(c) where the land pays no such revenue, or has been partially exempted
from such payment, or is charged with any fixed payment in lieu of such
revenue,

and nett profits have arisen from the land during the year next before
the date of presenting the plaint—

fifteen times such nett profits :

but where no such nett profits have arisen therefrom—the amount at
which the Court shall estimate the land with reference to the value of
similar land in the neighbourhood :

(d, where the land forms part of an estate paying revenue to Govern-
ment, but is not a definite share of such estate, and is not separately assessed
as above-mentioned—the market-value of the land :

Provided that, in the territories subject to the Governor of Bombay
Proviso as to Bombay Pre- in Council, the value of the land shall be deemed
sideney. to be—

(1) where the land is held on settlement for a period not exceeding
thirty years, and pays the full assessment to Government—a sum equal to
five times the survey-assessment ;

(2) where the land is held on a permanent settlement, or on a settle-
ment for any period exceeding thirty years, and pays the full assessment to
Government—a sum equal to ten times the survey-assessment ; and

(3) where the whole or any part of the annual survey-assessment is
remitted—a sum computed under paragraph (1) or paragraph (2) of this
proviso, as the case may be, in addition to ten times the assessment or the
portion of assessment so remitted :

Explanation.—The word 'estate,' as used in this paragraph, means any
land subject to the payment of revenue, for which the proprietor, or a

farmer or raiyat, shall have executed a separate engagement, to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue :

(e) where the subject-matter is a house or garden—according to the for houses and gardens. market-value of the house or garden.

vi. In suits to enforce a right of pre-emption—according to the value to enforce a right of pre- (computed in accordance with paragraph v. of emption: this section) of the land, house, or garden in respect of which the right is claimed :

vii. In suits for the interest of an assignee of land-revenue—fifteen for interest of assignee of times his nett profits as such for the year next land-revenue : before the date of presenting the plaint :

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for to set aside an attachment: which the land or interest was attached :

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest :

ix. In suits against a mortgagee for the recovery of the property mortgaged, to redeem : and in suits by a mortgagee to foreclose the mortgage, to foreclose :

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage :

for specific performance : x. In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration :

(b) of a contract of mortgage—according to the amount agreed to be secured :

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term :

(d) of an award—according to the amount or value of the property in dispute :

xi. In the following suits between landlord and tenant. and tenant :

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(d) to contest a notice of ejectment,

(e) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

8. The amount of fee payable under this Act on a memorandum of

Fee on memorandum of appeal against an order relating to compensation appeal against order relating under any Act for the time being in force for the to compensation. acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

9. If the Court sees reason to think that the annual nett profits or the

Power to ascertain nett profits or market-value. as is mentioned in section seven, paragraphs five and six, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

10. i. If, in the result of any such investigation, the Court finds that

Procedure where nett profits or market-value wrongly estimated. the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion, refund the excess paid as such fee: but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated:

ii. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed:

iii. Section one hundred and eighty of the Code of Civil Procedure shall be construed as if the words 'the market-value of any property or' were inserted after the word 'ascertaining,' and as if the words 'or annual nett profits' were inserted after the word 'damages.'

11. In suits for mesne-profits or for immoveable property and mesne-

Procedure in suits for mesne-profits or account when amount decreed exceeds amount claimed. profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed, shall have been paid to the proper officer.

Where the amount of mesne-profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits so ascertained, is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

12. i. Every question relating to valuation for the purpose of deter-

Decision of questions as to valuation. mining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit:

ii. But whenever any such suit comes before a Court of appeal, reference, or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section ten, paragraph ii., shall apply.

13. If an appeal or plaint, which has been rejected by the lower Court

Refund of fee paid on memorandum of appeal. on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section three

hundred and fifty-one of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Where an application for a review of judgment is presented on or

Refund of fee on applica- after the ninetieth day from the date of the decree, tion for review of judgment. the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate, authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

15. Where an application for a review of judgment is admitted, and

Refund where Court re- where, on the rehearing, the Court reverses or modifies its former reverses or modifies its former decision on the ground of mis- decision on ground of mis- take in law or fact, the applicant shall be entitled take. to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application* as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. one, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. When any appeal is presented to a Civil Court, not against the

Additional fee where whole of a decision, but only against so much respondent takes objection to thereof as relates to a portion of the subject- unappealed part of decree. matter of the suit, and, on the hearing of such appeal, the respondent takes, under section three hundred and forty-eight of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to.

17. Where a suit embraces two or more distinct subjects, the plaint or

Multifarious suits. memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section nine.

18. When the first or only examination of a person who complains of

Written examinations of the offence of wrongful confinement, or of wrong- complainants. ful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

* See Act XX. of 1870.

Exemption of certain documents.

19. Nothing contained in this Act shall render the following documents chargeable with any fee :—

- i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer, or private of Her Majesty's army not in civil employment.
- ii. Declarations mentioned in section one hundred and eighteen and section one hundred and sixty-four of the Code of Civil Procedure.
- iii. Written statements called for by the Court after the first hearing of a suit.
- iv. Plaint presented to a Military Court of Requests and petition for execution of a decree of such Court.
- v. Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.
- vi. Plaints and processes in suits before District Pancháyats in the same Presidency.
- vii. Plaints in suits before Collectors under Madras Regulation XII. of 1816.
- viii. Probate of a will, letters of administration, and certificate mentioned in the first schedule to this Act annexed, No. twelve, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.
- ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.
- x. Application relating to a supply for irrigation of water belonging to Government.
- xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.
- xii. Application for service of notice of relinquishment of land or of enhancement of rent.
- xiii. Written authority to an agent to distrain.
- xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.
- xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.
- xvi. Petition, application, charge, or information respecting any offence, when presented, made, or laid to or before a police-officer, or to or before the Heads of Villages or the Village Police in the territories respectively subject to the Governors in Council of Madras and Bombay.

- xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.
- xviii. Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or servant of a Railway Company.
- xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.
- xx. Application for the payment of money due by Government to the applicant.
- xxi. Petition of appeal against the *chaukidári* assessment under Act No. XX. of 1856, or against any municipal tax.
- xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.
- xxiii. Petitions presented to the Special Commissioner appointed under Bengal Act No. II. of 1869 (*to ascertain, regulate, and record certain tenures in Chutid Nágpur*).
- xxiv. Petitions under the* Indian Christian Marriage Act, 1872, sections forty-five and forty-eight.

CHAPTER IIIA.†

PROBATES, LETTERS OF ADMINISTRATION, AND CERTIFICATES OF ADMINISTRATION.

19A. Where any person, on applying for the probate of a will or letters, Relief where too high a Court-fee has been paid. of administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a Court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority of the province in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation, and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled ;

(b) substitute another stamp for denoting the Court-fee which should have been paid thereon ; and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from a deceased person have been paid out of his estate from the deceased to such an amount as, being deducted out of the amount of value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less Court-fee to be paid on the probate or letters of administration granted in respect of such estate, than has been actually paid thereon under this Act,

* See Act XV. of 1872, s. 2.

† This chapter has been inserted by Act XIII. of 1875, s. 6.

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

19C. Whenever such a grant of probate or letters of administration

Relief in case of several grants. has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate ;

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

19D. The probate of the will, or the letters of administration of the

Probates declared valid as to trust-property, though not covered by Court-fee. effects, of any person deceased, heretofore or hereafter granted, shall be deemed valid and available by his executors or administrators for recovering, transferring, or assigning any moveable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a Court fee was paid on such probate or letters of administration.

19E. Where any person, on applying for probate or letters of adminis-

Provision for case where too low a Court-fee has been paid on probates, &c. tration, has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a Court-fee thereon, the Chief Controlling Revenue Authority of the province in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full Court-fee, which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or if it or they is or are produced after one year from such date, of twenty times, such proper Court-fee, without any deduction of the Court-fee originally paid on such probate or letters.

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a Court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper Court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

19F. In case of letters of administration on which too low a Court-fee

Administrator to give proper security before letters stamped under section 19E.

has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid, until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof, in case the full value of the estate of the deceased had been then ascertained.

19G. Where too low a Court-fee has been paid on any probate or letters

Executors, &c., not paying full Court-fee on probates, &c, within six months after discovery of under-payment.

of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the first day of April 1875, or after the discovery of the mistake, or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the Court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees, and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper Court-fee.

19H. The provisions of sections 19A to 19G (both inclusive) shall,

Sections 19A to 19G applied to certificates under Acts XL of 1858 and XX of 1864.

mutatis mutandis, apply to certificates granted under Act No. XL of 1858 (*for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*) or Act XX. of 1864 (*for making better provision for the care of the persons and property of Minors in the Presidency of Bombay*) and to the holders of such certificates.

CHAPTER IV.

PROCESS FEES.

Rules as to costs of processes.

20. The High Court shall, as soon as may be, make rules as to the following matters :—

- i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction ;
- ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant ; and
- iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

All such rules, alterations, and additions, shall, after being confirmed

Confirmation and publication of rules.

by the Local Government, and sanctioned by the Governor-General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A Table in the English and Vernacular languages, showing the

Table of process fees.

fee chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

22. Subject to rules to be made by the High Court, and approved by the Local Government and the Governor-General of India in Council,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto ;

and for the purposes of this section, every Court of Small Causes established under Act No. XI. of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

23. Subject to rules to be framed by the Chief Controlling Revenue Authority, and approved by the Local Government and the Governor-General of India in Council, every officer performing the functions of a Collector of a District shall fix, and, may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

24. Every process served or executed under this chapter shall be held to be a process within the meaning of section one hundred and eighty-eight of the Code of Civil Procedure, and of section two of Act No. XXIII. of 1861 (*to amend Act VIII. of 1859*).

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps. 25. All fees referred to in section three, or chargeable under this Act, shall be collected by stamps.

26. The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor-General of India in Council may, by notification in the *Gazette of India*, from time to time, direct.

Rules for supply, number, renewal, and keeping accounts of stamps. 27. The Local Government may, from time to time, make rules for regulating—

(a) the supply of stamps to be used under this Act,
(b) the number of stamps to be used for denoting any fee chargeable under this Act,

(c) the renewal of damaged or spoiled stamps, and

(d) the keeping accounts of all stamps used under this Act :

Provided that, in the case of stamps used under section three in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

Stamping documents inadvertently received.

But if any such document is, through mistake or inadvertence, received, filed, or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

29. Where any such document is amended in order merely to correct a mistake, and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

31. i. Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police-officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

ii. In the case mentioned in section eighteen, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

32. The Code of Civil Procedure, sections three hundred and eight and three hundred and nine, shall be read as if, for the words 'stamp-duty' and 'stamp,' the words and figures 'fees chargeable under the Court Fees' Act, 1870,' were substituted; section three hundred and seventy-one of the same Code shall be read as if, for the words 'a stamp of the value,' the words 'the payment of the fee' were substituted; and section three hundred and seventy-three of the same Code shall be read as if, for the words 'on a stamp paper of the value,' the words 'and shall be chargeable with the fee,' were substituted; and as if for the words 'for the stamps,' the words 'the fees' were substituted.*

* See Act XVI. of 1870.

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section four or section six shall be deemed to prohibit such filing or exhibition.

34. In the General Stamp Act, 1869, section forty-eight shall be read as if, for the words and figures 'Act No. XXVI. of 1867 (*to amend the law relating to Stamp Duties*),' the words and figures 'The Court Fees' Act, 1870,' were substituted.

35. The Governor-General of India in Council may, from time to time, by notification in the *Gazette of India*, reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed,

and may, in like manner, cancel or vary such order.

36. Nothing in Chapters II. and V. of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

SCHEDULE I.

Ad valorem fees.

NUMBER.		PROPER FEE.
1. <i>Plaint or memorandum of appeal (not otherwise provided for in this Act), presented to any Civil or Revenue Court, except those mentioned in section three.*</i>	When the amount or value of the subject-matter in dispute does not exceed five rupees... ..	Six annas.
	When such amount or value exceeds five rupees, For every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, For every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees	Twelve annas.
	When such amount or value exceeds one thousand rupees, For every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees	Five rupees.
	When such amount or value exceeds five thousand rupees, For every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Ten rupees.
	When such amount or value exceeds ten thousand rupees, For every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees, For every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees... ..	Twenty rupees.
	When such amount or value exceeds thirty thousand rupees, For every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Twenty rupees.
	When such amount or value exceeds fifty thousand rupees, For every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Twenty-five rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	

* To ascertain the proper fee leviable on the institution of a suit, see the Table annexed to this schedule.

SCHEDULE I.—(continued).

Ad valorem fees.

NUMBER.		PROPER FEE.
2. <i>Plaint in a suit for possession under Act No. XIV. of 1859 (to provide for the limitation of suits), section fifteen</i>	...	A fee of one-half the amount prescribed in the foregoing scale.
3. <i>[Repealed by Act No. VIII. of 1871.]</i>		
4. <i>Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.</i>	...	The fee leviable on the plaint or memorandum of appeal.
5. <i>Application for review of judgment if presented before the ninetieth day from the date of the decree.</i>	...	One-half of one fee leviable on the plaint or memorandum of appeal.
6. <i>Copy or translation of a judgment or order not being, or having the force of, a decree.</i>	<p>When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or office, or by any other Judicial or Executive Authority—</p> <p>(a.)—If the amount or value of the subject-matter is fifty or less than fifty rupees ...</p> <p>(b.)—If such amount or value exceeds fifty rupees ...</p> <p>When such judgment or order is passed by a High Court ...</p>	<p>Four annas.</p> <p>Eight annas.</p> <p>One rupee.</p>
7. <i>Copy of a decree or order having the force of a decree.</i>	<p>When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—</p> <p>(a.)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees ...</p> <p>(b.)—If such amount or value exceeds fifty rupees ...</p> <p>When such decree or order is made by a High Court ...</p>	<p>Eight annas.</p> <p>One rupee.</p> <p>Four rupees.</p>
8. <i>Copy of any document liable to stamp-duty under the General Stamp Act, 1869, when left by any party to a suit or proceeding in place of the original withdrawn.</i>	<p>(a.)—When the stamp-duty chargeable on the original does not exceed eight annas ...</p> <p>(b.)—In any other case ...</p>	<p>The amount of the duty chargeable on the original.</p> <p>Eight annas.</p>

SCHEDULE I.—(continued).

Ad valorem fees.

NUMBER.		PROPER FEE.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report, or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words	Eight annas.
10 Certificate of administration granted under Act No. XL of 1858 (for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal), or under Act No. XX. of 1864 (for making better provision for the care of the persons and property of minors in the Presidency of Bombay).	If the amount or value of the property in respect to which such certificate is granted does not exceed five hundred rupees If such amount or value exceeds five hundred rupees, but not one thousand rupees... .. And for every one thousand rupees, or part thereof, in excess of one thousand rupees	Five rupees. Ten rupees. Five rupees.
11. Probate of a will or letters of administration with or without will annexed		
12 Certificate granted under Act No. XXVII. of 1860 (for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons), or under Bombay Regulation VIII. of 1827 (to provide for the formal recognition of Heirs, Executors, and Administrators, and for the appointment of Administrators and Managers of Property by the Courts).	If the amount or value of the property* in respect of which the probate or letters or certificate shall be granted exceeds one thousand rupees. Note—The person to whom any such certificate is granted, or his representative, shall, after the expiration of twelve months from the date of such certificate, and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all monies recovered or realized by him under such certificate.	Two percentum on such amount or value.

* i.e., property of or to which the deceased was possessed or entitled.—In the goods of George, 6 Beng. Appendix, 188.

SCHEDULE I.—(continued).

Ad valorem fees.

NUMBER.		PROPER FEE.
	<p>If the monies so recovered or realized exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same, and order such person to take out a fresh certificate, and pay the fee prescribed by this schedule for such excess.</p> <p>In default of filing such statement within the time allowed, the Court may cancel the certificate.*</p>	

* That the certificate liable to cancellation remains in force until cancelled, see 6 Madras, 135.

SCHEDULE I—(continued).

Table of rates of ad valorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
0	5	0 6 0
5	10	0 12 0
10	15	1 2 0
15	20	1 8 0
20	25	1 14 0
25	30	2 4 0
30	35	2 10 0
35	40	3 0 0
40	45	3 6 0
45	50	3 12 0
50	55	4 2 0
55	60	4 8 0
60	65	4 14 0
65	70	5 4 0
70	75	5 10 0
75	80	6 0 0
80	85	6 6 0
85	90	6 12 0
90	95	7 2 0
95	100	7 8 0
100	110	8 4 0
110	120	9 0 0
120	130	9 12 0
130	140	10 8 0
140	150	11 4 0
150	160	12 0 0
160	170	12 12 0
170	180	13 8 0
180	190	14 4 0
190	200	15 0 0
200	210	15 12 0
210	220	16 8 0
220	230	17 4 0
230	240	18 0 0
240	250	18 12 0
250	260	19 8 0
260	270	20 4 0
270	280	21 0 0
280	290	21 12 0
290	300	22 8 0
300	310	23 4 0
310	320	24 0 0
320	330	24 12 0
330	340	25 8 0

SCHEDULE I—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs	Rs A. P.
340	350	26 4 0
350	360	27 0 0
360	370	27 12 0
370	380	28 8 0
380	390	29 4 0
390	400	30 0 0
400	410	30 12 0
410	420	31 8 0
420	430	32 4 0
430	440	33 0 0
440	450	33 12 0
450	460	34 8 0
460	470	35 4 0
470	480	36 0 0
480	490	36 12 0
490	500	37 8 0
500	510	38 4 0
510	520	39 0 0
520	530	39 12 0
530	540	40 8 0
540	550	41 4 0
550	560	42 0 0
560	570	42 12 0
570	580	43 8 0
580	590	44 4 0
590	600	45 0 0
600	610	45 12 0
610	620	46 8 0
620	630	47 4 0
630	640	48 0 0
640	650	48 12 0
650	660	49 8 0
660	670	50 4 0
670	680	51 0 0
680	690	51 12 0
690	700	52 8 0
700	710	53 4 0
710	720	54 0 0
720	730	54 12 0
730	740	55 8 0
740	750	56 4 0
750	760	57 0 0
760	770	57 12 0
770	780	58 8 0

SCHEDULE I.—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
780	790	59 4 0
790	800	60 0 0
800	810	60 12 0
810	820	61 8 0
820	830	62 4 0
830	840	63 0 0
840	850	63 12 0
850	860	64 8 0
860	870	65 4 0
870	880	66 0 0
880	890	66 12 0
890	900	67 8 0
900	910	68 4 0
910	920	69 0 0
920	930	69 12 0
930	940	70 8 0
940	950	71 4 0
950	960	72 0 0
960	970	72 12 0
970	980	73 8 0
980	990	74 4 0
990	1,000	75 0 0
1,000	1,100	80 0 0
1,100	1,200	85 0 0
1,200	1,300	90 0 0
1,300	1,400	95 0 0
1,400	1,500	100 0 0
1,500	1,600	105 0 0
1,600	1,700	110 0 0
1,700	1,800	115 0 0
1,800	1,900	120 0 0
1,900	2,000	125 0 0
2,000	2,100	130 0 0
2,100	2,200	135 0 0
2,200	2,300	140 0 0
2,300	2,400	145 0 0
2,400	2,500	150 0 0
2,500	2,600	155 0 0
2,600	2,700	160 0 0
2,700	2,800	165 0 0
2,800	2,900	170 0 0
2,900	3,000	175 0 0
3,000	3,100	180 0 0
3,100	3,200	185 0 0

SCHEDULE I.—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A P.
3,200	3,300	190 0 0
3,300	3,400	195 0 0
3,400	3,500	200 0 0
3,500	3,600	205 0 0
3,600	3,700	210 0 0
3,700	3,800	215 0 0
3,800	3,900	220 0 0
3,900	4,000	225 0 0
4,000	4,100	230 0 0
4,100	4,200	235 0 0
4,200	4,300	240 0 0
4,300	4,400	245 0 0
4,400	4,500	250 0 0
4,500	4,600	255 0 0
4,600	4,700	260 0 0
4,700	4,800	265 0 0
4,800	4,900	270 0 0
4,900	5,000	275 0 0
5,000	5,250	285 0 0
5,250	5,500	295 0 0
5,500	5,750	305 0 0
5,750	6,000	315 0 0
6,000	6,250	325 0 0
6,250	6,500	335 0 0
6,500	6,750	345 0 0
6,750	7,000	355 0 0
7,000	7,250	365 0 0
7,250	7,500	375 0 0
7,500	7,750	385 0 0
7,750	8,000	395 0 0
8,000	8,250	405 0 0
8,250	8,500	415 0 0
8,500	8,750	425 0 0
8,750	9,000	435 0 0
9,000	9,250	445 0 0
9,250	9,500	455 0 0
9,500	9,750	465 0 0
9,750	10,000	475 0 0
10,000	10,500	490 0 0
10,500	11,000	505 0 0
11,000	11,500	520 0 0
11,500	12,000	535 0 0
12,000	12,500	550 0 0
12,500	13,000	565 0 0

SCHEDULE I.—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		
Rs	Rs.	Rs	A	P.
13,000	13,500	580	0	0
13,500	14,000	595	0	0
14,000	14,500	610	0	0
14,500	15,000	625	0	0
15,000	15,500	640	0	0
15,500	16,000	655	0	0
16,000	16,500	670	0	0
16,500	17,000	685	0	0
17,000	17,500	700	0	0
17,500	18,000	715	0	0
18,000	18,500	730	0	0
18,500	19,000	745	0	0
19,000	19,500	760	0	0
19,500	20,000	775	0	0
20,000	21,000	795	0	0
21,000	22,000	815	0	0
22,000	23,000	835	0	0
23,000	24,000	855	0	0
24,000	25,000	875	0	0
25,000	26,000	895	0	0
26,000	27,000	915	0	0
27,000	28,000	935	0	0
28,000	29,000	955	0	0
29,000	30,000	975	0	0
30,000	32,000	995	0	0
32,000	34,000	1,015	0	0
34,000	36,000	1,035	0	0
36,000	38,000	1,055	0	0
38,000	40,000	1,075	0	0
40,000	42,000	1,095	0	0
42,000	44,000	1,115	0	0
44,000	46,000	1,135	0	0
46,000	48,000	1,155	0	0
48,000	50,000	1,175	0	0
50,000	55,000	1,200	0	0
55,000	60,000	1,225	0	0
60,000	65,000	1,250	0	0
65,000	70,000	1,275	0	0
70,000	75,000	1,300	0	0
75,000	80,000	1,325	0	0
80,000	85,000	1,350	0	0
85,000	90,000	1,375	0	0
90,000	95,000	1,400	0	0
95,000	1,00,000	1,425	0	0

SCHEDULE I.—(continued).

Table of rates of ad valorem fees &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
1,00,000	1,05,000	1,450 0 0
1,05,000	1,10,000	1,475 0 0
1,10,000	1,15,000	1,500 0 0
1,15,000	1,20,000	1,525 0 0
1,20,000	1,25,000	1,550 0 0
1,25,000	1,30,000	1,575 0 0
1,30,000	1,35,000	1,600 0 0
1,35,000	1,40,000	1,625 0 0
1,40,000	1,45,000	1,650 0 0
1,45,000	1,50,000	1,675 0 0
1,50,000	1,55,000	1,700 0 0
1,55,000	1,60,000	1,725 0 0
1,60,000	1,65,000	1,750 0 0
1,65,000	1,70,000	1,775 0 0
1,70,000	1,75,000	1,800 0 0
1,75,000	1,80,000	1,825 0 0
1,80,000	1,85,000	1,850 0 0
1,85,000	1,90,000	1,875 0 0
1,90,000	1,95,000	1,900 0 0
1,95,000	2,00,000	1,925 0 0
2,00,000	2,05,000	1,950 0 0
2,05,000	2,10,000	1,975 0 0
2,10,000	2,15,000	2,000 0 0
2,15,000	2,20,000	2,025 0 0
2,20,000	2,25,000	2,050 0 0
2,25,000	2,30,000	2,075 0 0
2,30,000	2,35,000	2,100 0 0
2,35,000	2,40,000	2,125 0 0
2,40,000	2,45,000	2,150 0 0
2,45,000	2,50,000	2,175 0 0
2,50,000	2,55,000	2,200 0 0
2,55,000	2,60,000	2,225 0 0
2,60,000	2,65,000	2,250 0 0
2,65,000	2,70,000	2,275 0 0
2,70,000	2,75,000	2,300 0 0
2,75,000	2,80,000	2,325 0 0
2,80,000	2,85,000	2,350 0 0
2,85,000	2,90,000	2,375 0 0
2,90,000	2,95,000	2,400 0 0
2,95,000	3,00,000	2,425 0 0
3,00,000	3,05,000	2,450 0 0
3,05,000	3,10,000	2,475 0 0
3,10,000	3,15,000	2,500 0 0
3,15,000	3,20,000	2,525 0 0

SCHEDULE I.—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.	
Rs.	Rs.	Rs.	A. P.
3,20,000	3,25,000	2,550	0 0
3,25,000	3,30,000	2,575	0 0
3,30,000	3,35,000	2,600	0 0
3,35,000	3,40,000	2,625	0 0
3,40,000	3,45,000	2,650	0 0
3,45,000	3,50,000	2,675	0 0
3,50,000	3,55,000	2,700	0 0
3,55,000	3,60,000	2,725	0 0
3,60,000	3,65,000	2,750	0 0
3,65,000	3,70,000	2,775	0 0
3,70,000	3,75,000	2,800	0 0
3,75,000	3,80,000	2,825	0 0
3,80,000	3,85,000	2,850	0 0
3,85,000	3,90,000	2,875	0 0
3,90,000	3,95,000	2,900	0 0
3,95,000	4,00,000	2,925	0 0
4,00,000	4,05,000	2,950	0 0
4,05,000	4,10,000	2,975	0 0
4,10,000	.....	3,000	0 0

SCHEDULE II.

Fixed Fees.

NUMBER.		PROPER FEE.
1. Application* or petition ...	<p>(a.)—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ;</p> <p>or when presented to any officer of land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement ;</p> <p>or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement ;</p> <p>or when presented to any Civil Court† other than a principal Civil Court of original jurisdiction, or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859, or to any Court of Small Causes constituted under Act No. XI of 1865, or under Act No. XVI. of 1868, section twenty, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees ;</p> <p>or when presented to any Civil, Criminal, or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court, Board, or officer, or of any other document‡ on record in such Court or office.</p>	One anna.

* In writing, 2 N. W. P. 418. † 7 Bom. A. C. J. 109. ‡ 6 Bengal, Appendix, 187.

SCHEDULE II.—(continued).

Fixed Fees.

NUMBER.		PROPER FEE.
1. Application or petition— (continued) ...	(b.)—When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court; or when presented to a Civil, Criminal, or Revenue Court, or to a Collector, or any revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act; or to deposit in Court revenue or rent; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	Eight annas.
	(c.)—When presented to a Chief Commissioner or other chief controlling revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division, and not otherwise provided for by this Act	
2. Application for leave to sue as a pauper	(d.)—When presented to a High Court... ..	One rupee.
	... ..	Two rupees.
	... ..	Eight annas.
3. Application for leave to appeal as a pauper	(a.)—When presented to a District Court	One rupee.
	(b.)—When presented to a Commissioner or a High Court ...	Two rupees.
4. Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI. of 1838, or Bombay Act No. V. of 1864 (<i>to give Mamlat-dárs' Courts jurisdiction in certain cases to maintain existing possession or to restore possession to any party dispossessed otherwise than by course of law.</i>)	... ..	Eight annas.

SCHEDULE II.—(continued).

Fixed Fees.

NUMBER.		PROPER FEE.
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	}	Eight annas.
6. Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority.		
7. Undertaking under section forty-nine of the Indian Divorce Act.		
8. Petition of objection to assessment under the Indian Income Tax Act.		
9. Petition of appeal under the Indian Income Tax Act ... ..	... ..	One rupee.
10. Mukhtárnáma or Wakálatnáma.	When presented for the conduct of any one case—	
	(a.)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this Number	Eight annas.
	(b.)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the chief revenue or executive authority	One rupee.
	(c.)—to a High Court, Chief Commissioner, Board of Revenue, or other chief controlling revenue or executive authority	Two rupees.
11. Memorandum of appeal when the appeal is not from an order rejecting a plaint or from a decree or an order having the force of a decree, and is presented—	(a.)—to any Civil Court other than a High Court or to any Revenue Court, or executive officer other than the High Court or chief controlling revenue or executive authority	Eight annas.

SCHEDULE II.—(continued).

Fixed Fees.

NUMBER.		PROPER FEE.
1. Application or petition— (continued) ...	<p>(b.)—When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court; or when presented to a Civil, Criminal, or Revenue Court, or to a Collector, or any revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;</p> <p>or to deposit in Court revenue or rent;</p> <p>or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.</p> <p>(c.)—When presented to a Chief Commissioner or other chief controlling revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division, and not otherwise provided for by this Act</p> <p>(d.)—When presented to a High Court... ..</p>	<p>Eight annas.</p> <p>One rupee.</p> <p>Two rupees. ---</p> <p>Eight annas.</p>
2. Application for leave to sue as a pauper ... ..	... ..	Eight annas.
3. Application for leave to appeal as a pauper	<p>(a.)—When presented to a District Court... ..</p> <p>(b.)—When presented to a Commissioner or a High Court ...</p>	<p>One rupee.</p> <p>Two rupees.</p>
4. Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI. of 1838, or Bombay Act No. V. of 1864 (to give <i>Mámlat-dárs'</i> Courts jurisdiction in certain cases to maintain existing possession or to restore possession to any party dispossessed otherwise than by course of law.	... ..	Eight annas.

SCHEDULE II.—(continued).

Fixed Fees.

NUMBER.	PROPER FEE.
5. Complaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	Eight annas.
6. Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority.	
7. Undertaking under section forty-nine of the Indian Divorce Act.	
8. Petition of objection to assessment under the Indian Income Tax Act.	One rupee.
9. Petition of appeal under the Indian Income Tax Act	
10. Mukhtárnáma or Wakálatnáma.	When presented for the conduct of any one case—
	(a.)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (d) and (e) of this Number
	(b.)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the chief revenue or executive authority
	(c.)—to a High Court, Chief Commissioner, Board of Revenue, or other chief controlling revenue or executive authority
11. Memorandum of appeal when the appeal is not from an order rejecting a plaint or from a decree or an order having the force of a decree, and is presented—	(a.)—to any Civil Court other than a High Court or to any Revenue Court, or executive officer other than the High Court or chief controlling revenue or executive authority

SCHEDULE II.—(continued).

Fixed Fees.

NUMBER.		PROPER FEE.
Memorandum, &c.—(<i>contd.</i>)	(b.)—to a High Court or Chief Commissioner, or other chief controlling executive or revenue authority	Two rupees.
12. Caveat.	}	Five rupees.
13. Application under Act No. X. of 1859, section twenty-six, or Bengal Act No. VI. of 1862, section nine, or Bengal Act No. VIII. of 1869, section seven.*		
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.		
15. Plaint or memorandum of appeal in a suit to obtain possession of a wife.		
16. Administration-bond.	Eight rupees.
17. Plaint or memorandum of appeal in each of the following suits:—	}	Ten rupees.
i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court:		
ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates:		
iii. to obtain a declaratory decree where no consequential relief is prayed:†		
iv. to set aside an award:		
v. to set aside an adoption:		
vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act ...		
18. Application under section three hundred and twenty-six of the Code of Civil Procedure	}	
19. Agreement under section three hundred and twenty-eight of the same Code		

* *Sic.* Read 'thirty-seven.'

† See 8 Beng., App. 32.

SCHEDULE II.—(concluded).

Fixed Fees.

NUMBER.		PROPER FEE.
20 Every petition under the Indian Divorce Act, except petitions under section forty-four of the same Act, and every memorandum of appeal under section fifty-five of the same Act.	}	
21. Plaint or memorandum of appeal under the Pársi Marriage and Divorce Act, 1865.	}	Twenty rupees.

THE LAND-ACQUISITION ACT, NO. X. OF 1870.

RECEIVED THE G.-G.'s ASSENT ON THE 1ST APRIL 1870.

An Act for the Acquisition of Land for Public Purposes and for Companies.

WHEREAS it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Land Acquisition Act, 1870 :"

Local extent.

It extends to the whole of British India ;*

Commencement.

And it shall come into force on the first day of June 1870.

2. On and from such day Act No. VI. of 1857 (*for the acquisition of land for public purposes*), Act No. II. of 1861 (*to amend Act No VI. of 1857*), and Act No. XXII.

of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken*), shall be repealed.

All references made to any of the said Acts in subsequent Acts, orders, or contracts, shall be read as if made to this Act.

Interpretation-clause.

3 † In this Act—

The expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth :

The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act :

The expression "Collector" means the Collector of a District, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act :

The expression "Court" means, in the Regulation Provinces, British Burma, and Sindh, a principal Civil Court of original jurisdiction, and in the Non-regulation Provinces other than British Burma and Sindh, the Court of a Commissioner of a Division,

* It has also been applied to Mysore (8th June 1870) and the Handaribid Assigned Districts (14th July 1870).

† So much of this section as declares the Commissioner of a Division to be a principal Civil Court of original jurisdiction in Oudh has been repealed by Act XIII. of 1879.

unless when the Local Government has appointed (as it is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a Judge under this Act, and then the expression "Court" means the Court of such officer ;

The expression "Company" means a Company registered under the Indian Companies' Act, 1866, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent :

And the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability :

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age ; and

the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.

PART II.

ACQUISITION.

Preliminary Investigation.

4. Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the local Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Thereupon it shall be lawful for any officer either generally or specially authorized by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality :

to dig or bore into the sub-soil :

to do all other acts necessary to ascertain whether the land is adapted for such purpose :

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon :

to mark such levels, boundaries, and line by placing marks and cutting trenches ;

and, where otherwise the survey cannot be completed, and the levels taken, and the boundaries and line marked, to cut down and clear away any part of any standing

crop, fence, or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof), without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorized shall, at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

Declaration of Intended Acquisition.

6. Subject to the provisions of Part VII. of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government, or of some officer duly authorized to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, or out of some municipal fund, or by a Company.

The declaration shall be published in the local official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section four) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

9. The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post.

10. The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Every person required to make or deliver a statement under this section or section nine shall be deemed to be legally bound to do so within the meaning of sections one hundred and seventy-five and one hundred and seventy-six of the Indian Penal Code.

Persons required to make statements to be deemed legally bound to do so.

Enquiry into Value and Claims.

11. On the day so fixed, the Collector shall proceed to enquire summarily into the value of the land and to determine the amount of compensation which in his opinion should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

Enquiry into value and amount of compensation. Tender.

For the purpose of such enquiry, the Collector shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (as far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

Power to summon witnesses.

12. The Collector may, if no claimant attends pursuant to the notice, or if, for any other cause, he thinks fit, from time to time, postpone the enquiry to a day to be fixed by him.

Postponement of enquiry.

13. In determining the amount of compensation the Collector shall take into consideration the matters mentioned in section twenty-four, and shall not take into consideration any of the matters mentioned in section twenty-five.

Matters to be considered and matters to be neglected.

Award by Collector.

14. If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

Award in case of agreement as to compensation.

Such award shall be filed in the Collector's office, and shall be conclusive evidence, as between the Collector and the persons interested, of the value of the land and the amount of compensation allowed for the same.

Award to be filed and to be evidence.

Reference where no claimant attends, or if Collector and persons interested cannot agree,

15. When the Collector proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which it may have been postponed, if no claimant attends, or if the Collector considers that further enquiry as to the nature of the claim ought to be made by the Court, or if any person whom the Collector has reason to think interested does not attend,

or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed,

or if upon the said enquiry any question respecting the title to the land, or any rights thereto or interests therein, arise between or among two or more persons making conflicting claims in respect thereof,

the Collector shall refer the matter to the determination of the Court in manner hereinafter appearing.

Taking Possession.

16. When the Collector has made an award under section fourteen or

Power to take possession. a reference to the Court under section fifteen, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

17. In cases of urgency, whenever the Local Government so directs, the Collector (though no such reference has been directed or award made) may, on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of section nine, take possession of any waste or arable land needed for public purposes or for a Company.

Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land; and in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. In making a reference under section fifteen, the Collector shall state Collector's statement on for the information of the Court, in writing under reference to Court. his hand,

(a) the situation and extent of the land needed,
(b) the names of the persons whom he has reason to think interested in such land,

(c) the amount awarded for damages, and paid or tendered under sections five and seventeen, or either of them, the amount of compensation tendered for the land under section eleven, or, if no claimant has attended pursuant to the notice mentioned in section nine, the amount of compensation which the Collector is willing to give to the persons interested, and

(d) the grounds on which the amount of compensation was determined.

19. The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under section nine) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed.

The Court shall also cause a notice to be served on the Collector and each of such persons, requiring them to appoint, on or before a day to be therein mentioned, two qualified assessors (one to be nominated by the Collector, and the other by the persons interested) for the purpose of aiding the Judge in determining the amount of the compensation.

If no claimant has attended pursuant to the notice mentioned in section nine, the Court shall cause to be affixed on some conspicuous place, on or near the land needed, a notice to the effect that, if the persons interested in such land do not, on or before a day to be therein mentioned, appear in Court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate a qualified assessor, the Court will proceed to determine such amount.

20. In case of failure to nominate either of such assessors within the time so specified, the Judge shall himself appoint an assessor.

21. As soon as the assessors have been appointed, the Judge and the assessors shall proceed to determine the amount of the compensation.

22. If, before such amount is determined, any of the assessors dies, or desires to be discharged, or refuses or neglects, or becomes incapable, to act, the party by whom he was appointed may appoint some other qualified person to act in his place.

If the assessor so dying, or desiring to be discharged, or refusing, or neglecting, or becoming incapable, were appointed by the Judge,

or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another,

the Judge shall appoint some other qualified person in his stead.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying, or desiring to be discharged, or refusing or neglecting or becoming incapable.

23. Every proceeding under section twenty-one shall take place in open Court, and all persons entitled to practise in any Civil Court shall be entitled to appear, plead, and act, or to appear and act (as the case may be) in such proceeding.

24. In determining the amount of compensation to be awarded for land acquired under this Act, the Judge and assessors shall take into consideration—

First, the market-value, at the time of awarding compensation, of such land :

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land :

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property whether moveable or immoveable, in any other manner, or his earnings ; and

Fourthly, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

25. But the Judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the acquisition :

Secondly, any disinclination of the person interested to part with the land acquired :

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit :

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put :

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired :

Sixthly, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put ; or

Seventhly, any outlay or improvements on such land made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

26. Where the person interested has made a claim to compensation, Rules as to amount of compensation. pursuant to any notice mentioned in section nine or in section nineteen, the amount awarded to him shall not exceed the amount so claimed, or be less than the amount tendered by the Collector under section eleven.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered.

The provisions of this and the two preceding sections shall be read to every assessor, in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded under this Act.

Record of assessors' opinions. 27. The opinion of each assessor shall be given orally, and shall be recorded in writing by the Judge.

28. In case of a difference of opinion between the Judge and the assessors, or any of them, upon a question of law or practice or usage having the force of law, the opinion of the Judge shall prevail, and there shall be no appeal therefrom.

29. In case the Judge and one or both of the assessors agree as to the amount of compensation, their decision thereon shall be final.

30. In case of difference of opinion between the Judge and both of the assessors* as to the amount of compensation, the decision of the Judge shall prevail, subject to the appeal allowed under section thirty-five.

31. Every assessor appointed under this Act, not being an officer of Government, shall receive such fee for his services as the Judge shall direct, provided that such fee shall not exceed five hundred rupees.

Assessors' fees. Such fee shall be deemed to be costs in the proceeding.

32. The costs of all proceedings taken under this Part by order of the Court shall, in the first instance, be paid by the Collector.

33. Where the amount awarded does not exceed the sum tendered by the Collector, the costs of all proceedings under this Part shall be paid by the person interested.

Party to pay costs.

* Whether or not they agree with each other, 17 Suth. W. R., 225.

Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the Collector.

34. Every award made under this Part shall be in writing signed by the Judge and the assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of section twenty-four, and also the amounts (if any) respectively awarded under the second, third, and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

It shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

The costs (if any) payable by the person interested, and not deducted under section forty-two, may be recovered as if they were costs incurred in a suit, and as if the Recovery of costs. award were the decree therein.

35. If the Judge differs from both the assessors as to the amount of Appeal from Judge's decision as to compensation. compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge,* unless the Judge whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds five thousand rupees, in either of which cases the appeal shall lie to the High Court.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

Provisions of Code of Civil Procedure made applicable.

36. The following provisions of the Code of Civil Procedure :—

- (a) as to adding parties,
 - (b) as to adjournment,
 - (c) as to death, marriage, and bankruptcy or insolvency of parties,
 - (d) as to summoning witnesses and their attendance,
 - (e) as to examination of parties and witnesses,
 - (f) as to production of documents, and
 - (g) as to commissions to examine absent witnesses and to make local enquiries,
- shall apply, so far as may be, to proceedings before the Court.

PART IV.

APPORTIONMENT OF COMPENSATION.

37. Where there are several persons interested, if such persons agree in Particulars of apportionment to be specified. the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

38. When the amount of compensation has been settled under section Dispute as to apportionment. fourteen, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.

* Includes the High Court in the exercise of its appellate jurisdiction 13 Beng. 139.

39. When the amount of compensation has been settled by the Court, Determination of propor- and there is any dispute as to the apportionment tions. thereof, or when a reference to the Court has been

made under section thirty-eight, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided* for regular appeals in suits.

PART V.

PAYMENT.

40. Payment of the compensation shall be made by the Collector according- ing to the award to the persons named therein, or, Payment of compensation to whom made. in the case of an appeal under section thirty-nine, according to the decision on such appeal :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto. Proviso.

41. When the amount of the compensation has been settled under section fourteen, if the persons interested shall so desire, the Collector shall, on the making of the said award, pay the amount of such compensation, and take possession of the land : Payment on making award by Collector.

Provided that, in any case where immediate possession is not required, he may allow the occupants if any) of the land to remain in occupation of the same, upon such terms as he and they may agree on, until possession of the land is required.

42. In addition to the amount of any compensation awarded under Part II. or Part III. of this Act, the Collector shall, in consideration of the compulsory nature of the acquisition, pay fifteen per centum on the market-value mentioned in section twenty-four. Percentage on market-value.

When the amount of such compensation is not paid on taking possession, the Collector shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six per centum per annum from the time of so taking possession : Payment with interest.

Provided that the costs, if any, payable to the Collector by the person interested, shall be deducted from such amount and percentage :

Provided that, in cases where the decision of the Court under Part III. or Part IV. of this Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage, or any part thereof, until the time for appealing against such decision has expired, and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of. Time of payment in appealable cases.

* See Act XII. of 1876.

PART VI.

TEMPORARY OCCUPATION OF LAND.

43. Subject to the provisions of Part VII. of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.

Power to enter and take possession

44. On payment of such compensation,

or on executing such agreement,
or on making a reference under section forty-three,
the Collector may enter upon and take possession of the land and use or permit the use thereof in accordance with the terms of the said notice.

And on the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and, if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

45. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference for the final order of the Court, and on such reference, or on a reference under section forty-three, the Judge sitting alone shall decide the difference referred.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

46. Subject to such rules as the Governor-General of India in Council may, from time to time, prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section four,

In every such case section four shall be construed as if, for the words "for such purpose," the words "for the purposes of the Company" were substituted, and section five shall be construed as if, after the words "the officer," the words "of the Company" were inserted.

47. The provisions of section six to section forty-five (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, and unless the Company shall have executed the agreement hereinafter mentioned.

Execution of agreement.

48. Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided—

Previous enquiry.

(1) that such acquisition is needed for the construction of some work, and

(2) that such work is likely to prove useful to the public.

Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

49. Such officer shall report to the Local Government the result of the enquiry, and if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may, from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely :—

- (1.) The payment to Government of the cost of the acquisition :
- (2.) The transfer on such payment, of the land to the Company :
- (3.) The terms on which the land shall be held by the Company :
- (4.) The time within which, and the conditions on which, the work shall be executed and maintained ; and
- (5.) The terms on which the public shall be entitled to use the work.

50. Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India*, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Publication of agreement.

PART VIII.

MISCELLANEOUS.

51. Service of any notice under this Act shall be made by delivering or tendering a copy thereof, signed, in the case of a notice under section four, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

Service of notice.

Whenever it may be practicable, the service of the notice shall be made on the person therein named.

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business.

52. Whoever wilfully obstructs any person in doing any of the acts authorized by section four or section eight, or wilfully fills up, destroys, damages, or displaces any trench or mark made under section four, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Obstruction to survey, &c.
Filling trenches
Destroying land-marks.

53. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Magistrate to enforce surrender.

54. Except in the case provided for in section forty four, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

Government not bound to complete acquisition.

But whenever the Government declines to complete any such acquisition, the Collector shall determine the amount of compensation due for the damage (if any) done to such land under section four or section eight, and not already paid for under section five, and shall pay such amount to the person injured.

Compensation when acquisition is not completed

55. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desire that the whole of such house, manufactory, or building shall be so acquired.*

Part of house or building not to be taken.

56. Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any Municipal Fund, or of any Company, the charges incurred by the Collector in such acquisition shall be defrayed from or by such Fund or Company.

Payment of Collector's charges by Municipal Body or Company.

57. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption from stamp-duty and fees.

58. No suit shall be brought to set aside an award under this Act.

Bar of suits to set aside awards under Act.

* See 5 Bom., O. C. J., 98, a decision on the corresponding section of Act VI. of 1867.

And no suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.*

59. The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may, from time to time, alter and add to the rules so made.

All such rules, alterations, and additions, shall, when sanctioned by the Governor-General in Council, be published in the local official Gazette, and shall thereupon have the force of law.†

* Repealed, so far as it relates to the limitation of suits, by Act IX of 1871 s. 2.

† See the Bengal Rules, *Official Gazette*, 7th July 1875, p. 818. Bombay Rules, *Bombay Government Gazette*, 13th March 1875, p. 225. North West Provinces Rules, *North Western Provinces Gazette*, 18th December 1875, p. 1744.

THE HINDU WILLS ACT. NO. XXI. OF 1870.

RECEIVED THE G. O.'S ASSENT ON THE 19TH JULY 1870.

An Act to regulate the Wills of Hindús, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.

WHEREAS it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation, and probate of the wills of Hindús, Jainas, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay, It is hereby enacted as follows:—

Short title

1 This Act may be called "The Hindú Wills Act, 1870."

Certain portions of Act X of 1865 extended to wills of Hindús, Jainas, Sikhs, and Buddhists.

2. The following portions of the Indian Succession Act, 1865, namely,—

sections forty-six, forty-eight, forty-nine, fifty, fifty-one, fifty-five, and fifty-seven to seventy-seven (both inclusive),
sections eighty-two, eighty-three, eighty-five, eighty-eight to one hundred and three (both inclusive),
sections one hundred and six to one hundred and seventy-seven (both inclusive),
sections one hundred and seventy-nine to one hundred and eight-nine (both inclusive),
sections one hundred and ninety-one to one hundred and ninety-nine (both inclusive),
so much of Parts XXX. and XXXI. as relates to grants of probate* and letters of administration with the will annexed, and
Parts XXXIII to XL (both inclusive), so far as they relate to an executor and an administrator with the will annexed,
shall, notwithstanding anything contained in section three hundred and thirty one of the said Act, apply—

(a) to all wills and codicils made by any Hindú, Jaina, Sikh, or Buddhist, on or after the first day of September one thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situated within those territories or limits:

Provisoos.

3. Provided that marriage shall not revoke any such will or codicil:

* This makes "the probate evidence against all persons, executors, or others interested under the will."—8 Beng. 208, 220.

And that nothing herein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for section two of this Act, he could not deprive them by will :

And that nothing herein contained shall vest in the executor or administrator with the will annexed of a deceased person any property which such person could not have alienated *inter vivos* :

And that nothing herein contained shall affect any law of adoption or intestate succession :

And that nothing herein contained shall authorize any Hindú, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before the first day of September one thousand eight hundred and seventy.

4. On and from that day, section two of Bengal Regulation V. of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant Governor of Bengal.

Partial repeal of Bengal Regulation V. of 1799, section 2.

5. Nothing contained in this Act shall affect the rights, duties, and privileges of the Administrators General of Bengal, Madras, and Bombay, respectively.*

Saving of rights of Administrator-General.

6. In this Act and in the said sections and Parts of the Indian Succession Act all words defined in section three of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section three has attached to such words respectively.

Interpretation-clause.

And in applying sections sixty-two, sixty-three, ninety-two, ninety-six, ninety-eight, ninety-nine, one hundred, one hundred and one, one hundred and two, one hundred and three, and one hundred and eighty-two, of the said Succession Act, to wills and codicils made under this Act, the words "son" "sons," "child," and "children," shall be deemed to include an adopted child ; and the word "grandchildren" shall be deemed to include the children, whether adopted or natural-born, of a child, whether adopted or natural-born ; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son :

And in making grants, under this Act, of letters of administration with the will annexed, or with a copy of the will annexed, section one hundred and ninety-five of the said Succession Act shall be construed as if the words "and in case the Hindú Wills Act had not been passed" were added thereto ; and section one hundred and ninety-eight of the said Succession Act shall be construed as if, after the word "intestate," the words "and the Hindú Wills Act had not been passed" were inserted ; and sections two hundred and thirty and two hundred and thirty-one of the said Succession Act shall be construed as if the words, "if the Hindú Wills Act had not been passed," were added thereto, respectively.

* See Act II. of 1874.

THE BENGAL CIVIL COURTS ACT.

NO. VI. OF 1871.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH FEBRUARY 1871.

An Act to consolidate and amend the law relating to the District and Subordinate Civil Courts in Bengal.

WHEREAS it is expedient to consolidate and amend the law relating to the District and Subordinate Civil Courts in the territories respectively under the governments of the Lieutenant-Governors of the Lower and North-Western Provinces of the Presidency of Fort William in Bengal ; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Bengal Civil Courts Act, 1871."

Local extent.

It extends to the territories for the time being respectively under the governments of the said Lieutenant-Governors, except such portions thereof as for the time being are not subject to the ordinary jurisdiction of the High Courts, and except the Jhansi Division.

Except this section and sections seventeen, twenty-nine, and thirty, nothing herein contained applies to Courts of Small Causes established under Act No. XI. of 1865.

Partial exclusion of Mussal Small Cause Courts.

2. [*Repealed by Act XII. of 1873.*]

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

3. The number of District Judges to be appointed under this Act shall be fixed, and may, from time to time, be altered, by the Local Government.

4. The number of Subordinate Judges and Munsifs to be appointed under this Act in each district shall be fixed, and may, from time to time, be altered, by the Local Government.

5. Whenever the office of District Judge or Subordinate Judge under this Act is vacant, or whenever the Governor-General in Council has sanctioned an increase of the number of District Judges or Subordinate Judges, the Local Government shall supply such vacancy, or appoint such additional District Judges or Subordinate Judges, as the case may be.

6. Whenever the office of a Munsif is vacant, or when the Governor-General in Council has sanctioned an increase of the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly :

Vacancies in Munsifships.

Vacancies in District Judgeships.

Provided that the Local Government may, with the sanction of the Governor-General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif under this Act; and on such rules being made, no person shall be nominated to such office unless he possesses the qualifications required by the said rules.

7. When the business pending before any District Judge requires the aid of Additional Judges for their* speedy disposal, the Local Government may, upon the recommendation of the High Court, and subject to the sanction of the Governor-General in Council, appoint such Additional Judges as may be requisite.

Such Additional Judges shall perform any of the duties of a District Judge under Chapter III. of this Act that the District Judge may, with the sanction of the High Court, assign to them, and in the performance of such duties they shall exercise the same powers as the District Judge.

8. In the event of the death of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the station in which his Court is held, the Additional Judge, or, if there is no Additional Judge attached to such Court, the senior Subordinate Judge of the district shall, without relinquishing his ordinary duties, assume charge of the Judge's office,

and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes, and the like functions,

and shall continue in charge of the office until it is resumed by the District Judge or assumed by an officer duly appointed thereto.

9. In the event of the death of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence on leave when no person is appointed to act for him,

the District Judge may transfer all or any of the proceedings pending in the Court of such Subordinate Judge either to his own Court or to the Court of a Subordinate Judge (if any) under his control.

All proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

A District Judge, on the occurrence within his district of any vacancy in the office of Munsif, may, pending the action of the High Court under section six, appoint such person as he thinks fit to act in such office.

And he shall forthwith report to the High Court the occurrence of every such vacancy and such appointment.

Power to confer judicial powers on officers in Kachár, Assam, Chutia Nágpur, and Kúch Bihár.

10. The Local Government may invest with the powers of any Court under this Act any officer in the district of Kachár and the divisions of Assam, Chutia Nágpur, and Kúch Bihár.

Nothing in sections three to nine (inclusive), thirty-two, thirty-three, and thirty-four, applies to any such officer. But all the other provisions of this Act apply, *mutatis mutandis*, to officers so invested.

11. The general control over all the Civil Courts in any district is vested in the District Judge, but subject to the superintendence of the High Court.

12. The present Judges of the Zila Courts, Additional Judges, Subordinate Judges, and Munsifs, shall be deemed to have been duly appointed to the offices the duties of which they have respectively discharged, and shall be the First District Judges, Additional Judges, Subordinate Judges, and Munsifs under this Act.

13.—[*Repealed by Act X. of 1873.*]

14. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

15. Every District Judge, Additional Judge, Subordinate Judge, and Munsif under this Act, shall be deemed to be a Civil Court within the meaning of the Code of Civil Procedure and of this Act.

16. The Local Government may fix, and from time to time alter, the place or places at which any Court under this Act is to be held.

17. Subject to such orders as may from time to time be issued by the Governor-General in Council, the High Court shall prepare a list of days to be observed in each year as close holidays in the Courts subordinate thereto.

Such list shall be published in the local official Gazette, and the said days shall be observed accordingly.

CHAPTER III.

ORDINARY JURISDICTION.

18. The Local Government shall fix, and may from time to time vary, the local limits of the jurisdiction of any Civil Court under this Act :

Provided that, where more than one Subordinate Judge is appointed to any district, and where more than one Munsif is appointed to any munsifi, the Judge of the District Court may assign to each such Subordinate Judge or Munsif, the local limits of his particular jurisdiction within such district or munsifi as the case may be.

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to be fixed under this Act.

19. The jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions in the Code of Civil Procedure, section six,* to all original suits cognizable† by the Civil Court.

20. The jurisdiction of a Munsif extends to all like suits in which the amount or value of the subject-matter in dispute‡ does not exceed one thousand rupees.

21. Appeals from the decrees and orders of District Judges and Additional Judges shall, when such appeals are allowed by law, lie to the High Court.

* i.e., sections 15 and 25 of Act XIV. of 1882.

† for the time being.

‡ 18 Suth. C. R. 268—9.

22. Appeals from the decrees and orders of Subordinate Judges and Appeals from Subordinate Judges and Munsifs. Munsifs shall, when such appeals are allowed by law, lie to the District Judge, except where the amount or value of the subject-matter in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court :

Provided that the High Court may, from time to time, with the previous sanction of the Local Government, order that all appeals from the decrees and orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the order, and such appeals shall thereupon be preferred accordingly.

23.—[*Repealed by Act XII. of 1873.*]

24. Where, in any suit or proceeding, it is necessary for any Court under this Act to decide any question regarding Certain decisions, to be according to native law. succession, inheritance, marriage, or caste, or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindú law in cases where the parties are Hindús, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished.

In cases not provided for by the former part of this section, or by any other law for the time being in force, the Court shall act according to justice, equity, and good conscience.

25. No Munsif, Subordinate Judge, Additional Judge, or District Judge Judges not to try suits in which they are interested. shall try any suit in which he is a party or person-ally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.

No Subordinate Judge, Additional Judge, or District Judge shall try any appeal against a decree or order passed by himself in another capacity.

When any such suit, proceeding, or appeal comes before any such Munsif, Subordinate Judge, Additional Judge, or District Judge, he shall forthwith transmit the whole record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure, section six.*

Nothing in the last preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

CHAPTER IV.

SPECIAL JURISDICTION.

26. Every District Judge may from time to time, subject to the orders of the High Court, refer to any Subordinate Judge under his control any appeals pending before him from the decisions of Munsifs; and such Subordinate Judge shall hear and dispose of such appeals accordingly. The District Judge may withdraw any appeals so referred, and hear and dispose of appeals so withdrawn.

* Now Act XIV. of 1882, s. 25.

27. The High Court may from time to time, by order, authorize any District Judge to transfer to a Subordinate Judge under his control appeals from orders of Munsifs preferred under the Code of Civil Procedure, sections 36, 76, 85, 94, 119, 231, and 257, or under

Transfer to Subordinate Judge or Munsif of appeals and proceedings pending before District Judge.

Act XXIII. of 1861, section 11.*

The High Court may also from time to time, by order, authorize any District Judge to transfer to a Subordinate Judge or Munsif under the control of such District Judge any of the proceedings next hereinafter mentioned, or any class of such proceedings specified in such order, and then pending, or thereafter instituted, before such District Judge.

The proceedings referred to in the second clause of this section are the following (that is to say),—

(1.) Proceedings under Bengal Regulation V., 1799 (*to limit the interference of the Zila and City Courts of Dīwānī Adālat in the execution of wills and administration to the estates of persons dying intestate*).

(2.) Proceedings under Act No. XL. of 1858 (*for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal*), or Act No. IX. of 1861 (*to amend the law relating to minors*).

(3.) Claims to attached property under the Code of Civil Procedure, section 278.

(4.) Applications by judgment-debtors under section 344 of the same Code.

(5.) Applications to file awards under section 525 of the same Code.

(6.) Applications for permission to sue or appeal as a pauper.

(7.) Applications for certificates under Act No. XXVII. of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*).

The District Judge may withdraw any proceedings so transferred, and may either himself dispose of them, or, with the sanction of the High Court, transfer them to any other Subordinate Judge or Munsif under his control.

23. Subject to the provisions of the last clause of section twenty-seven,

Disposal of proceedings so transferred. all proceedings transferred under the second clause of the same section shall be disposed of by the

Subordinate Judge or Munsif (as the case may be) according to the rules prescribed for the guidance of District Judges in like cases:

Provided that an appeal from the order of the Subordinate Judge or Munsif in such cases shall lie to the District Judge.

An appeal from his order thereon shall lie to the High Court if an appeal from the decision of the Judge in such proceedings is allowed by the law in force for the time being.

29. The Local Government may invest, within such local limits as it from time to time appoints, any Subordinate Judge

Power to invest Subordinate Judges with small cause jurisdiction.

with the jurisdiction of a Judge of a Court of

Small Causes for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Munsif with

* These appeals are now preferred, respectively, under Act XIV. of 1882, section 333 (=Act VIII. of 1859, section 231), and under the same Act, section 538, clause 6 (as to orders rejecting plaints), clause 8 (as to orders rejecting applications under section 103 to set aside dismissals of suits), clause 11 (as to questions arising in execution of decrees), clause 16 (as to orders confirming or setting aside sales) and clause 24 (as to orders, 1, to give bail for appearing, 2, for the attachment of property before judgment, and 3, granting injunctions).

similar jurisdiction up to the amount of fifty rupees ; and may, whenever it thinks fit, withdraw such jurisdiction from the Subordinate Judge or Munsif so invested.

30. Section 51 of Act No. XI. of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be read as if, for the words "Principal Sadr Amin," the words "Subordinate Judge" were substituted.

CHAPTER V.

MISFEAZANCE.

31. Any District Judge, Additional Judge, Subordinate Judge, or Munsif, may, for any misconduct, be suspended or removed by the Local Government.

Suspension or removal of Judges.

32. The High Court may, whenever it sees urgent necessity for so doing, suspend any Subordinate Judge under its control.

Whenever the High Court exercises this power, it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order thereon as it thinks fit.

Suspension of Munsifs by High Court.

33. The High Court may appoint a commission for enquiring into the alleged misconduct of any Munsif.

On receiving the report of the result of any such enquiry, the High Court may, if it thinks fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

The provisions of Act No. XXXVII of 1850 (*for regulating enquiries into the behaviour of public servants*) shall apply to enquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

The High Court may also, previous to the appointment of such commission, suspend any Munsif pending the result of the enquiry.

The High Court may, without appointing any such commission, remove or suspend any Munsif, or reduce him to a lower grade.

34. Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any Munsif under his control.

Whenever a District Judge suspends from office any such Munsif, he shall forthwith send to the High Court a full report of the circumstances of the suspension, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit.

CHAPTER VI.

MINISTERIAL OFFICERS.

35. The Judges of the District Courts shall appoint the ministerial officers of such Courts, and, subject only to the general control of the Local Government, the said Judges may remove or suspend such officers, or fine them in an amount not exceeding one month's salary.

Appointment and removal of ministerial officers of District Courts.

36. The ministerial officers of the Courts of Subordinate Judges and Munsifs shall be nominated and appointed by those Courts respectively, subject to the approval of the District Judge within whose jurisdiction such Courts are situate.

Appointment and removal of ministerial officers of Subordinate Judges and Munsifs.

Every such Court may, by order, remove or suspend from office, or fine in an amount not exceeding one month's salary, any of its ministerial officers who is guilty of any misconduct or neglect in the performance of the duties of his office. And the District Judge, subject only to the general control of the Local Government, may, on appeal or otherwise, reverse or modify every such order.

The District Judge, within whose jurisdiction such Court is situate, may, by order, suspend or remove any such ministerial officer.*

Nothing in this section or in section thirty-five shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being.

37. The Local Government may, at the instance of the District Judge, transfer from any Court in the territories subject to such Government, to any other Court in the same territories, all or any of the ministerial officers of such Judge or of any Subordinate Judge or Munsif under his control.

The District Judge may transfer all or any of the ministerial officers of any Court under his control to any other such Court.

38. Any fine imposed under this chapter shall, if the order imposing it so directs, be recovered by deduction from the offender's salary.

Recovery of fines.

* See Act XIX. of 1877.

THE INDIAN EVIDENCE ACT.

NO. I. OF 1872.

RECEIVED THE G.-G.'s ASSENT ON THE 15TH MARCH 1872.

WHEREAS it is expedient to consolidate, define, and amend the Law of Evidence; It is hereby enacted as follows:—
Preamble.

PART I.—RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

Short title. 1. This Act may be called “The Indian Evidence Act, 1872.”

Extent. It extends to the whole of British India,* and applies to all judicial proceedings in or before any Court, including Courts Martial,† but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator;

Commencement of Act. and it shall come into force on the first day of September 1872.

Repeal of enactments. 2. On and from that day the following laws shall be repealed:—

(1) All rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India.

(2) All such rules, laws, and regulations as have acquired the force of law under the twenty-fifth section of ‘The Indian Councils’ Act, 1861,’ in so far as they relate to any matter herein provided for; and

(3) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India, and not hereby expressly repealed.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

“Court.” “Court” includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.

* It has been applied to the Haidarabad Assigned Districts and the Cantonment of Sikan-darabad.—Foreign Department, No 80J, dated May 2, 1872.

† This is repealed, as to European Courts Martial, by the Mutiny Act: “No Court Martial shall, in respect of the conduct of its proceeding, or the reception or rejection of evidence, be subject to the provisions of the ‘Indian Evidence Act, 1872,’ or any Act of any Legislature, other than the Parliament of the United Kingdom.”—38 Vic., c. 7, s. 101.

“Fact.”

“Fact” means and includes—

- (1) any thing, state of things, or relation of things, capable of being perceived by the senses ;
- (2) any mental condition of which any person is conscious.

Illustrations.

(a.) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b.) That a man heard or saw something, is a fact.

(c.) That a man said certain words, is a fact.

(d.) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e.) That a man has a certain reputation, is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

“Relevant.”

“Facts in issue.”

The expression “facts in issue” means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue :—

That A caused B's death ;

That A intended to cause B's death ;

That A had received grave and sudden provocation from B ;

That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

“Document” means any matter expressed or described upon any substance

“Document.”

by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document :

Words printed, lithographed, or photographed, are documents :

A map or plan is a document :

An inscription on a metal plate or stone is a document :

A caricature is a document.

“Evidence.”

“Evidence” means and includes—

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry ;
such statements are called oral evidence :
- (2) all documents produced for the inspection of the Court ;
such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Proved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Disproved."

"Not proved."

A fact is said not to be proved when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

"May presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved:

"Shall presume."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

"Conclusive proof."

CHAPTER II.—OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Evidence may be given of facts in issue and relevant facts.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(a.) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(b.) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. Facts which, though not in issue, are so connected with a fact in issue

as to form part of the same transaction, are relevant, whether they occurred at the same time and place, or at different times and places.

Illustrations.

(a.) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction though A may not have been present at all of them.

(c.) A sues B on a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d.) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(a.) The question is, whether A robbed B.
The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(b.) The question is, whether A murdered B.
Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c.) The question is, whether A poisoned B.
The state of B's health before the symptoms ascribed to poison, and habits of B known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue, or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a.) A is tried for the murder of B.
The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.
The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison.
The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d.) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e.) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence, 'The police are coming to look for the man who robbed B,' and that immediately afterwards A ran away, are relevant.

(g.) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing, 'I advise you not to trust A, for he owes B 10,000 rupees,' and that A went away without making any answer, are relevant facts.

(h.) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

(k.) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

9. Facts necessary to explain or introduce a fact in issue or relevant

Facts necessary to explain or introduce a fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or facts which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b.) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c.) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business, at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A, 'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it, 'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(f.) A is tried for a riot, and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact ;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.*

Illustrations.

(a.) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore, is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b.) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant—

(a.) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

(b.) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind—such as inten-

Facts showing existence of state of mind, or of body, or bodily feeling.

tion, knowledge, good faith, negligence, rashness, ill-will, or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind, or body, or bodily feeling, is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

(a.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b.) A is accused of fraudulently delivering to another person a piece of counterfeit coin, which, at the time when he delivered it, he knew to be counterfeit.

The fact that at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(c.) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(d.) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not, in good faith, believe the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i.) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k.) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l.) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions shot at B, is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p.) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question, whether act was accidental or intentional.

Illustrations.

(a.) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance-office, are relevant, as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c.) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant, as showing that the delivery to B was not accidental.

16. When there is a question whether a particular act was done, the

Existence of course of business when relevant. existence of any course of business according to which it naturally would have been done, is a relevant fact.

Illustrations.

(a.) The question is whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b.) The question is whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Admissions.

17. An admission is a statement, oral or documentary, which suggests

Admission defined.

any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

18. Statements made by a party to the proceeding, or by an agent to

Admission--by party to any such party, whom the Court regards, under proceeding or his agent, the circumstances of the case, as expressly or implicitly authorized by him to make them, are admissions.

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by party interested in subject-matter;

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons, whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Admissions by persons whose position must be proved as against party to suit.

Illustration.

A undertakes to collect rents for B.
B sues A for not collecting rent due from C to B.
A denies that rent was due from C to B.
A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by A to B is sound.
A says to B, 'Go and ask C, C knows all about it.' C's statement is an admission.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest,* but they cannot be proved by or on behalf of the person who makes them, or by his representative in interest, except in the following cases:—

Proof of admissions against persons making them, and by or on their behalf.

(1.) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2.) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a) The question between A and B is whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c.) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it, and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

22. Oral admissions as to the contents of a document are not relevant,

When oral admissions as to contents of documents are relevant. unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. In civil cases no admission is relevant, if it is made either upon an

Admissions in civil cases when relevant. express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal

Confession caused by inducement, threat, or promise, when irrelevant in criminal proceeding. proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority,* and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police-officer not to be proved.

25. No confession made to a police-officer shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody of a

Confession by accused while in custody of police not to be proved against him. police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

27. Provided that, when any fact is deposed to as discovered in con-

How much of information received from accused may be proved. sequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat, or promise, relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise, has, in the opinion of the Court, been fully removed, it is relevant.

29. If such a confession

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

it was made in answer to ever may have been the warned that he was not bound to make such confession, and that evidence of it might be given against him.

is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because questions which he need not have answered, what- form of those questions, or because he was not bound to make such confession, and that evidence of

30. When more persons than one are being tried jointly for the same

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.*

Illustrations.

(a.) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C.' The Court may consider the effect of this confession as against B.

(b.) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, 'A and I murdered C.' This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may stop.

Statements by persons who cannot be called as witnesses.

32. Statements, written or verbal, of relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

of the case, appears to the Court unreasonable, are themselves relevant facts

in the following cases:—

(1.) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death,

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of

professional duty ; or of an acknowledgment, written or signed by him, of the receipt of money, goods, securities, or property of any kind ; or of a document used in commerce, written or signed by him ; or of the date of a letter or other document usually dated, written, or signed by him.

(3.) When the statement is against the pecuniary or proprietary interest or against interest of the person making it, or when, if true, it would make him criminally liable, or would have exposed him, to a criminal prosecution or to a suit for damages.

(4.) When the statement gives the opinion of any such person, as to the existence of any public right or custom, or matter of public right or custom, or of public or general interest, of the existence of matters of general interest ; which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

(5.) When the statement relates to the existence of any relationship by blood, marriage, or adoption* between persons as relationship ; to whose relationship of blood, marriage, or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6.) When the statement relates to the existence of any relationship by blood, marriage, or adoption* between persons relating to family affairs ; deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family-pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (a) ;

(7.) When the statement is contained in any deed, will, or other document which relates to any such transaction as is mentioned in section 13, clause (a).

or is made by several persons, and expresses feelings relevant to matter in question.

(8.) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a.) The question is whether A was murdered by B ; or A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B ; or The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b.) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother, and delivered her of a son, is a relevant fact.

(c.) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact.

(f.) The question is whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day.

The fact that a letter written by him is dated on that day is relevant.

(h.) The question is, what was the cause of the wreck of a ship.

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(i.) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased baniya in the ordinary course of his business, is a relevant fact.

(k.) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son is a relevant fact.

(l.) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m.) The question is whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B of his daughter's marriage with A on a given date, is a relevant fact.

(n.) A sues B for a libel expressed in a printed caricature exposed in a shop-window. The question is as to the similarity of the caricature and the libellous character. The remarks of a crowd of spectators on these points may be proved.

33. Evidence given by a witness in a judicial proceeding, or before any

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.*

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under Special Circumstances.

34. Entries in books of account, regularly kept in the course of busi-

Entries in books of account when relevant.

ness, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

* *Reg. v. Mowjan*, 20 Suth. W. R., C. R., 69.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country, and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

How much of a Statement is to be proved.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers, as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Judgments of Courts of Justice when relevant.

40. The existence of any judgment, order, or decree, which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact, when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

41. A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order, or decree is conclusive proof
 . that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation ;
 that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order, or decree* declares it to have accrued to that person ;
 that any legal character which it takes away from any such person ceased at the time from which such judgment, order, or decree* declared that it had ceased or should cease ;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order, or decree* declares that it had been or should be his property.

42. Judgments, orders, or decrees, other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the inquiry ; but such judgments, orders, or decrees are not conclusive proof of that which they state.†

Relevancy and effect of judgments, orders, or decrees, other than those mentioned in section 41.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders, or decrees, other than those mentioned in sections 40, 41, and 42, are irrelevant unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act

Judgments, &c., other than those mentioned in sections 40—42, when relevant.

Illustrations.

(a.) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.
 A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b.) A prosecutes B for adultery with C, A's wife.
 B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime.
 C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c.) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence

The existence of the judgment is relevant, as showing motive for a crime.

* See s. 3, Act XVIII., 1872.

† 22 *Suth. W. R.*, C. R., 365.

44. Any party to a suit or other proceeding may show that any judgment, order, or decree, which is relevant under section 10, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

Opinions of Third Persons, when relevant.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science, or art, or in questions as to identity of handwriting,* are relevant facts.
Such persons are called experts.

Opinions of experts.

Illustrations.

- (a.) The question is, whether the death of A was caused by poison.
The opinions of expert as to the symptoms produced by the poison by which A is supposed to have died, are relevant.
(b.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.
The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.
(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.
The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when Facts bearing upon opinions of experts. such opinions are relevant.

Illustrations.

- (a.) The question is, whether A was poisoned by a certain poison.
The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.
(b.) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.
The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.
47. When the Court has to form an opinion as to the person by whom Opinion as to handwriting any document was written or signed, the opinion when relevant. of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him

* See s. 4, Act XVIII., 1872.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A, and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C, and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C, nor D ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence, if it existed, are relevant.

Explanation.—The expression, general custom or right, includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. When the Court has to form an opinion as to—
 Opinions as to usages, the usages and tenets of any body of men or tenets, &c, when relevant. family,
 the constitution and government of any religious or charitable foundation, or
 the meaning of words or terms used in particular districts or by particular classes of people,
 the opinions of persons having special means of knowledge thereon, are relevant facts.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by Opinion on relationship, when relevant. conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section 494, 495, 497, or 498 of the Indian Penal Code.

Illustrations.

(a.) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife is relevant.

(b.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

51. Whenever the opinion of any living person is relevant, the Grounds of opinion, when relevant. grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.
 In civil case character to prove conduct, imputed, irrelevant.

In criminal cases previous good character is relevant.

In criminal proceedings previous conviction relevant, but not previous bad character, except in reply.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

54. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54, and 55, the word ‘character’ includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation and disposition were shown.

PART II.—ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

Facts of which Court must take judicial notice.

56. No fact of which the Court will take judicial notice need be proved.

57. The Court shall take judicial notice of the following facts:—

(1.) All laws or rules having the force of law, now or heretofore in force or hereafter to be in force, in any part of British India:

(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

(3.) Articles of War for Her Majesty's Army or Navy:

(4.) The course of proceeding of Parliament and of the Councils for the purpose of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto:

Explanation.—The word ‘Parliament,’ in clauses (2) and (4), includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland;

2. The Parliament of Great Britain;

3. The Parliament of England;

4. The Parliament of Scotland; and

5. The Parliament of Ireland:

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(6.) All seals of which English Courts take judicial notice; the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General or any Local Government in Council; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public; and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India:

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official gazette of any Local Government:

(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown :

(9.) The divisions of time, the geographical divisions of the world, and public festivals, fasts, and holidays notified in the official gazette :

(10.) The territories under the dominion of the British Crown :

(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons :

(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it :

(13.) The rule of the road on land or at sea.*

In all these cases, and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. No fact need be proved in any proceeding which the parties thereto

Facts admitted need not be proved. or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which, by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings : Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.—OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct ; that is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it ;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it ;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner ;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises, if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable :

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

* See s. 5, Act XVIII., 1872.

CHAPTER V.—OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document :

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest : but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1.) Certified copies given under the provisions hereinafter contained ;
- (2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies ;
- (3.) Copies made from or compared with the original ;
- (4.) Counterpart of documents as against the parties who did not execute them ;
- (5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy of a letter made by a copying-machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying-machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence ; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence, except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :—

- (a.) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it ;

(b.) When the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved, or by his representative in interest ;

(c) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;

(d.) When the original is of such a nature as not to be easily moveable ;

(e.) When the original is a public document within the meaning of section 74 ;

(f.) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence ;

(g.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c), and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Secondary evidence of the contents of the documents referred to in

Rules as to notice to produce section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader,* such notice to produce it as is prescribed by law ; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

(1.) When the document to be proved is itself a notice ;

(2.) When, from the nature of the case, the adverse party must know that he will be required to produce it ;

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;

(4.) When the adverse party or his agent has the original in Court ;

(5.) When the adverse party or his agent has admitted the loss of the document ;

(6.) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of signature and handwriting of person alleged to have signed or written document produced.

* See s. 6, Act XVIII., 1872.

68. If a document is required by law to be attested, it shall not be used

Proof of execution of document required by law to be attested.

as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and, subject

to the process of the Court, capable of giving evidence.

69. If no such attesting witness can be found, or if the document pur-

Proof where no attesting witness found.

ports to have been executed in the United Kingdom, it must be proved that the attestation of one

attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

70. The admission of a party to an attested document of its execution

Admission of execution by party to attested document.

by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

71. If the attesting witness denies or does not recollect the execution

Proof when attesting witness denies the execution.

of the document, its execution may be proved by other evidence.

72. An attested document not required by law

Proof of document not required by law to be attested.

to be attested may be proved as if it was unattested.

73. In order to ascertain whether a signature, writing, or seal is that of

Comparison of signature, writing, or seal, with others admitted or proved.

the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court

to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

Public Documents.

Public documents.

74. The following documents are public documents :—

1. Documents forming the Acts, or records of the Acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document, which

Certified copies of public documents.

any person has a right to inspect, shall give that person, on demand, a copy of it, on payment of

the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows :—

(1.) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government ;

(2.) The proceedings of the legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government ;

(3.) Proclamations, orders, or regulations issued by Her Majesty, or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer ;

(4.) The Acts of the Executive or the proceedings of the legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council ;

(5.) The proceedings of a municipal body in British India,

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body ; Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumption as to Documents.

79. The Court shall presume every document purporting to be a certificate, certified copy, or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine : Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession

by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence, statement, or confession was duly taken.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency, or possession of the British Crown or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law, and is produced from proper custody.

Presumption as to gazettes, newspapers, private Acts of Parliament, and other documents.

Presumption as to documents admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to

be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims:

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to maps or plans made by authority of Government.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul, or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Presumption as to powers-of-attorney.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to certified copies of foreign judicial records.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message, forwarded from a telegraphic office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, &c., of documents not produced.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a.) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(b.) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c.) A, a connection of B, produces deeds relating to land in B's possession which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in British India* may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to, are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a.) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b.) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of three, one only need be proved.

(d.) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e.) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. When the terms of any such contract, grant, or other disposition

Exclusion of evidence of property, or any matter required by law to be oral agreement.

reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

Proviso 1.—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto ; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso 2.—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso 3.—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property, may be proved.

Proviso 4.—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property, may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

* See s. 7, Act XVIII., 1872.

Proviso 5.—Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved : Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso 6.—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a.) A policy of insurance is effected on goods 'in ships from Calcutta to London.' The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b.) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c.) An estate, called 'the Rámpur tea estate,' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, cannot be proved.

(d.) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e.) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f.) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g.) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words : 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(h.) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money. In a suit for the amount, A may prove this.

(j.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Exclusion of evidence to explain or amend ambiguous document.

Illustrations.

(a.) A agrees, in writing, to sell a horse to B for 'Rs. 1,000, or Rs. 1,500.' Evidence cannot be given to show which price was to be given.

(b.) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

Illustration.

A sells to B, by deed, 'my estate at Rámpur containing 100 bighás.' A has an estate at Rámpur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document in unmeaning reference to existing facts.

Illustration.

A sells to B, by deed, 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(a.) A agrees to sell to B, for Rs. 1,000, 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(b.) A agrees to accompany B to Haidarábád. Evidence may be given of facts showing whether Haidarábád in the Dekkhn or Haidurabad in Sindh was meant.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations, and of words used in a peculiar sense.

Evidence as to meaning of illegible characters, &c.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Who may give evidence of agreement varying terms of document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X. of 1865) as to the construction of wills.

PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies on that person on whom burden of proof who would fail if no evidence at all were given on either side.

Illustrations.

(a.) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b.) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed, and the fraud is not proved.

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible.

Illustrations.

(a.) A wishes to prove a dying declaration by B. A must prove B's death.

(b.) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions.

the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or

Illustrations.

(a.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c.) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b.) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving death of person known to have been alive within thirty years.

when* the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to* the person who affirms it.

108. Provided that person is alive who has not been heard of for seven years. of proving that he is alive is shifted to* the person who affirms it.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Burden of proof as to ownership.

which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

* See s. 9, Act XVIII, 1872.

- 111.** Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Proof of good faith in transactions where one party is in relation of active confidence.

Illustrations.

(a.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

- 112.** The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. A notification in the *Gazette of India* that any portion of British, territory has been ceded to any Native State, Prince, or Ruler,* shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(a.) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

(b.) That an accomplice is unworthy of credit, unless he is corroborated in material particulars ;

(c.) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(d.) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence ;

(e.) That judicial and official acts have been regularly performed ;

(f.) That the common course of business has been followed in particular cases ;

(g.) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(h.) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(i.) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

As to illustration (a)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business :

* See, for example, *Gazette of India*, 4th January 1873, p. 2.

As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself :

As to illustration (b)—A crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot, and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable.

As to illustration (c)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :

As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :

As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances :

As to illustration (f)—The question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family :

As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :

As to illustration (i)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

115. When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such

Estoppel.
belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable and of licensee of person in possession. No person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Estoppel of acceptor of bill of exchange, bailee, or licensee.

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

118. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Parties to civil suit, and their wives or husbands
Husband or wife of person under criminal trial.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Judges and Magistrates.

Illustrations.

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. No Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence.

126. No barrister, attorney, pleader, or vakil, shall, at any time, be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any* illegal purpose;

(2) Any fact observed by any barrister, pleader, attorney, or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,* attorney, or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a.) A, a client, says to B, an attorney, 'I have committed forgery, and I wish you to defend me.'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b.) A, a client, says to B, an attorney, 'I wish to obtain possession of property by the use of a forged deed, on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c.) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

Section 126 to apply to interpreters, &c.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned

Privilege not waived by volunteering evidence.

in section 126; and if any party to a suit or proceeding calls any such barrister, pleader,* attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims.

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

* See s. 10, Act XVIII., 1872.

136. When either party proposes to give evidence of any fact, the Judge to decide as to ad- Judge may ask the party proposing to give the missibility of evidence. evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence, if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty two.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement

(b.) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

The examination of

a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

Re-examination.

Order of examinations.

Direction of re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Cross-examination of person called to produce a document.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

141. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

Leading questions.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

When they must not be asked.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

144. Any witness may be asked, whilst under examination, whether any contract, grant, or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Evidence as to matters in writing.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is whether A assaulted B.
C deposes that he heard A say to D, 'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those part of it which are to be used for the purpose of contradicting him.

Cross-examination as to previous statements in writing.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

- (1) to test his veracity;
- (2) to discover who he is, and what is his position in life, or
- (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations :—

(1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation, would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence :

(4.) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(a.) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b.) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c.) A witness, of whom nothing whatever is known, is asked at random whether he is dakait. There are here no reasonable grounds for the question.

(d.) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or, attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil, or attorney is subject in the exercise of his profession.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. When a witness has been asked, and has answered, any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a.) A claim against an underwriter is resisted on the ground of fraud.
The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2.) By proof that the witness has been bribed, or has accepted* the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in chief, give reasons for his belief,

* See s. 11, Act XVIII, 1872.

but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a.) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b.) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. When a witness whom it is intended to corroborate gives evidence

Questions tending to corroborate evidence of relevant fact, admissible. of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former

Former statements of witness may be proved to corroborate later testimony as to same fact. statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. Whenever any statement, relevant under section 32 or 33 is proved,

What matters may be proved in connection with proved statement relevant under section 32 or 33. all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory by

Refreshing memory. referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court,

When witness may use copy of document to refresh memory. refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

- 160.** A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

- 161.** Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party, if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Right of adverse party as to writing used to refresh memory.

- 162.** A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

Production of documents.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence, and if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Translation of documents.

- 163.** When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence, if the party producing it requires him to do so.

Giving, as evidence, of document called for and produced on notice.

- 164.** When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence, without the consent of the other party, or the order of the Court.

Using, as evidence, of document, production of which was refused on notice.

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

- 165.** The Judge may, in order to discover, or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing: and neither parties, nor their agents, shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question.

Judge's power to put questions or order production.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved :

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party ; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury, or with assessors, the jury or assessors may put any questions to the witnesses through or by leave of the Judge, which the Judge himself might put, and which he considers proper.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial, or reversal of any decision in any case, if it shall appear to the Court, before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

SCHEDULE.

ENACTMENTS REPEALED.

[See section 2.]

Number and year.	Title.	Extent of repeal.
Stat. 26, Geo. III., cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies ; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled ' An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies '), as requires the servants of the East India Company to deliver inventories of their estates and effects, for rendering the laws more effectual against persons unlawfully resorting to the East Indies ; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38, so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vic., cap. 99.	To amend the Law of Evidence ...	Section 11, and so much of section 19 as relates to British India.
Act XV. of 1852 ...	To amend the Law of Evidence ...	So much as has not been heretofore repealed.
Act XIX. of 1853 ...	To amend the law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II. of 1855 ...	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV. of 1861...	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
Act I. of 1868 ...	The General Clauses' Act, 1868... ...	Sections 7 and 8.

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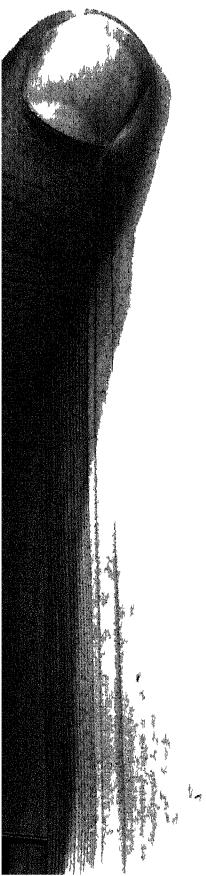
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THE INDIAN CONTRACT ACT, NO. IX. OF 1872.

RECEIVED THE G.-G.'s ASSENT ON THE 25TH APRIL 1872.

Preamble. WHEREAS it is expedient to define and amend
certain parts of the law relating to contracts ;
It is hereby enacted as follows —

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Contract Act, 1872."

Extent.

It extends to the whole of British India ; and it shall come into force on the first day of September 1872.*

Commencement.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof ; but nothing herein contained shall affect the provisions of any Statute, Act,† or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Enactments repealed.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context —

Interpretation-clause.

(a.)—When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal :

"Proposal "

(b.)—When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,‡ becomes a promise

"Promise "

(c.)—The person making the proposal is called the 'promisor,' and the "Promisor" and "pro- person accepting the proposal is called the 'promisee' "

(d.)—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

"Consideration "

"Agreement."

(e.)—Every promise and every set of promises, forming the consideration for each other, is an agreement.

(f.)—Promises which form the consideration or part of the consideration for each other are called reciprocal promises :

"Reciprocal promises."

"Void agreement."

(g.)—An agreement not enforceable by law is said to be void :

"Contract."

(h.)—An agreement enforceable by law is a contract :

* That it is not retrospective, see 12 Beng 472.

† See, for instance, Act XVIII. of 1854, s. 12.

‡ But see s. 4, il. b.

- (i.)—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :
 “Voidable contract.”
- (j.)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable
 “Void contract.”

CHAPTER I.—OF THE COMMUNICATION, ACCEPTANCE, AND REVOCATION OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances and respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate such proposal, acceptance, or revocation, or which has the effect of communicating it.

Communication when complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,
 as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the proposer ;
 as against the acceptor, when it comes to the knowledge of the proposer.
 The communication of a revocation is complete,
 as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it ;
 as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

- (a.) A proposes, by letter, to sell a house to B at a certain price.
 The communication of the proposal is complete when B receives the letter.
 (b.) B accepts A's proposal by a letter sent by post.
 The communication of the acceptance is complete,
 as against A when the letter is posted :
 as against B when the letter is received by A.
 (c.) A revokes his proposal by telegram.
 The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.
 B revokes his acceptance, by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration.

- A proposes, by a letter sent by post, to sell his house to B.
 B accepts the proposal by a letter sent by post.
 A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.
 B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party ;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance ;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise the acceptance must—

(1) be absolute and unqualified ;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise ; but, if he fails to do so, he accepts the acceptance.

8. Performance of the conditions of a proposal, or the acceptance of

Acceptance by performing conditions or receiving consideration.

any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

9. In so far as the proposal or acceptance of any promise is made in

Promises, express and implied

words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise

than in words, the promise is said to be implied.

CHAPTER II.—OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts* if they are made by the free consent

What agreements are contracts. of parties competent to contract, for a lawful consideration,† and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11. Every person is competent to contract who is of the age of majority

Who are competent to contract. according to the law to which he is subject,§ and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

* See s. 2, cl. h.

† See s. 25, expl. 2, and s. 102.

‡ See s. 25, *infra*, and Act VI. of 1840, s. 2 (acceptances of bills) ; Act XX. of 1847, s. 5 (assignment of copyright) ; Act XXXI. of 1854, ss. 14, 18 (conveyances of interests in immovable property in cases to which English law is applicable) ; 17 and 18 Vic., c. 104, s. 55 (transfers of registered ships or shares therein) ; Act X. of 1866, ss. 6, 16, 23, 42 (memorandum of association, articles of association, transfer of shares, contracts on behalf of company) ; Act XI. of 1876, s. 9 (contracts on behalf of Presidency Banks) ; and various local Acts, *e.g.*, the Oudh Rent Act (XIX. of 1868), ss. 36, 48, 116 ; the Madras Rent Act (VIII. of 1865), s. 7 ; and the Municipal Acts, IV. of 1873, s. 18 ; XI. of 1873, s. 18 ; XV. of 1873, s. 13 ; VII. of 1874, s. 81 ; Bengal Act IV. of 1876, s. 54 ; Madras Act IX. of 1867, s. 4 ; and Bombay Act III. of 1872, s. 54.

§ See Act IX. of 1875.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it, and of forming a rational judgment as to its effect upon his interests.

What is a sound mind for the purposes of contracting.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.*

Illustrations.

(a.) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b.) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Consent" defined.

14. Consent is said to be free when it is not caused by—

- (1) coercion, as defined in section fifteen, or
- (2) undue influence, as defined in section sixteen, or
- (3) fraud, as defined in section seventeen, or
- (4) misrepresentation, as defined in section eighteen, or
- (5) mistake, subject to the provisions of sections twenty, twenty-one, and twenty-two.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

"Coercion" defined.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

16. "Undue influence" is said to be employed in the following cases :—

(1.)—When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained:

(2.)—When a person whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that, to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.

* But see s. 68, *infra*.

17. "Fraud" means and includes any of the following acts committed by a party to a contract,* or with his connivance, "Fraud" defined. or by his agent,† with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :*—

(1.)—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;

(2.)—The active concealment of a fact by one having knowledge or belief of the fact ;

(3.)—A promise made without any intention of performing it ;

(4.)—Any other act fitted to deceive ;

(5.)—Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract,* is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,† or unless his silence is, in itself, equivalent to speech.

Illustrations.

(a.) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b.) B is A's daughter, and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c.) B says to A, "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech.

(d.) A and B, being traders, enter upon a contract.* A has private information of a change in prices which would affect B's willingness to proceed with the contract.* A is not bound to inform B.

"Misrepresentation" defined. 18. 'Misrepresentation' means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true ;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him ;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused by coercion, undue influence, fraud, or misrepresentation, the agreement is voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section seventeen, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

* Read 'agreement.'

† Compare s. 238, *infra*.

‡ See s. 143, *infra*.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(a.) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b.) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c.) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.*

(d.) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e.) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Agreement void where both parties are under mistake as to matter of fact. 20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(a.) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away, and the goods lost. Neither party was aware of these facts. The agreement is void.

(b.) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c.) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. The contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France. The contract is voidable.

~~Contract caused by mistake of one party as to matter of fact.~~

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

* Read "paid off" or "discharged."

What considerations and objects are lawful, and what not.

23. The consideration or object of an agreement is lawful, unless—

it is forbidden by law;* or
is of such a nature that, if permitted, it would defeat the provisions of any law; or
is fraudulent; or
involves or implies injury to the person or property of another; or the Court regards it as immoral† or opposed to public policy.‡

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement, of which the object or consideration is unlawful, is void.

Illustrations.

(a.) A agrees to sell his house to B for 10,000 rupees. Here, B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b.) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here, the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c.) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise; and these are lawful considerations.

(d.) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e.) A, B, and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f.) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g.) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(h.) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i.) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j.) A, who is B's mukhtâr, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k.) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

* See *infra*, ss. 26, 27, 28, 30.

† See 9 Beng. App. 37.

‡ See 4 Beng. O. C. J. : 9 Beng. App. 38 : 11 Beng. 129.

Void Agreements.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreements void, if considerations and objects unlawful in part.

Illustrations.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Agreement without consideration, void, unless—

25. An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

(3) it is a promise, made in writing, and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing, and registers it. This is a contract.

(c) A finds B's purse, and gives it to him. B promises to give A Rs. 50. This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract, notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person, other than a minor,* is void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Exception 2.—Partners may, upon or in anticipation of a dissolution of agreement between of the partnership, agree that some or all of them partners prior to dissolution; will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

Exception 3.—Partners may agree that some one or all of them will not or during continuance of carry on any business other than that of the partnership during the continuance of the partnership.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.†

§ § § § § § § §

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Agreements void, for uncertainly.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

(a.) A agrees to sell to B 'a hundred tons of oil' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b.) A agrees to sell to B one hundred tons of oil of a specified description known as an article of commerce. There is no uncertainty here to make the agreement void.

* During his or her minority, as to which see Act IX. of 1875.

† These words "do not mean an absolute restriction, and are intended to apply to a partial restriction, a restriction limited to some particular place." Per Couch, C.J., 14 Beng. 85.

‡ *Koegler v. Coringa Oil Company*, I. L. R., 1 Cal. 42.

§ Repealed by the Specific Relief Act (I. of 1877).

(c.) A, who is a dealer in cocoanut-oil only, agrees to sell to B 'one hundred tons of oil.' The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(d.) A agrees to sell to B 'all the grain in my granary at Rámnagar.' There is no uncertainty here to make the agreement void.

(e.) A agrees to sell to B 'one thousand maunds of rice at a price to be fixed by C.' As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f.) A agrees to sell to B 'my white horse for rupees five hundred or rupees one thousand.' There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void, and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of five hundred rupees or upwards to be awarded to the winner or winners of any horse-race.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.

Section 294A of the Indian Penal Code not affected.

CHAPTER III.—OF CONTINGENT CONTRACTS.

31. A 'contingent contract' is a contract to do or not to do something, "Contingent contract" if some event, collateral to such contract, does or does not happen.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening.

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations.

(a.) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(b.) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c.) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

33. Contingent contracts to do or not to do anything, if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Enforcement of contracts contingent on an event not happening.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

34. If the future event on which a contract is contingent is the way

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration.

A agrees to pay B a sum of money if B marries C.
C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

35. Contingent contracts to do or not to do anything, if a specified

When contracts become void, which are contingent on happening of specified event within fixed time.

uncertain event happens within a fixed time, become void, if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time,

When contracts may be enforced, which are contingent on specified event not happening within fixed time.

may be enforced by law when the time fixed has expired, and such event has not happened, or, before the time fixed has expired, if it becomes

certain that such event will not happen.

Illustrations.

(a.) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year; and becomes void if the ship is burnt within the year.

(b.) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within a year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible

Agreements contingent on impossible events, void. event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations.

(a.) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b.) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.—OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform,

Obligation of parties to contracts. their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance,* unless a contrary intention appears from the contract.

* This probably means "to the extent of the assets received by them as such, and not duly applied." See *Madho Dass v. Radha Mal*, 9 Panjab Record, 213.

Illustrations.

(a.) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b.) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Effect of refusal to accept offer of performance.

Every such offer must fulfil the following conditions :—

(1.) It must be unconditional.

(2.) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(3.) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the 1st March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that he may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract,* unless he has signified, by words or conduct, his acquiescence in its continuance.

Effect of refusal of party to perform promise wholly.

the promisee may put an end to the contract,* unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(a.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom contracts must be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Person by whom promise is to be performed.

of the parties to any contract that any promise contained in it should be performed by the promisor

himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

* And see s. 75, *infra*.

Illustrations.

(a.) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b.) A promises to paint a picture for B. A must perform this promise personally.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.
Effect of accepting performance from third person.

42. When two or more persons have made a joint promise, then (unless a contrary intention appears by the contract), all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.
Devolution of joint liabilities.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one of such* joint promisors to perform the whole of the promise.
Any one of joint promisors may be compelled to perform.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.
Each promisor may compel contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.
Sharing of laws by default in contribution.

Explanation.—Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(a.) A, B, and C, jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b.) A, B, and C, jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c.) A, B, and C, are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d.) A, B, and C, are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.†
Effect of release of one joint promisor.

* The meaning probably is 'any one or more of such.'

† See s. 138, *infra*.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

Time and Place for Performance.

Time for performance of promise, where no application is to be made, and no time is specified.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question, 'What is a reasonable time?' is, in each particular case, a question of fact.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question, 'What is a proper time and place?' is, in each particular case, a question of fact.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

50. The performance of any promise may be made in any manner or at any time which the promisee prescribes or sanctions.

Illustrations.

(a.) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b.) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c.) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part-payment.

(d.) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(a.) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b.) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52. Where the order in which reciprocal promises are to be performed

Order of performance of reciprocal promises. is expressly fixed by the contract, they shall be performed in that order, and where the order is

not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(a.) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b.) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the

Liability of party preventing event on which contract is to take effect. contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation* from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

* See s. 73, infra.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

54. When a contract consists of reciprocal promises, such that one of

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(a.) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b.) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c.) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d.) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. When a party to a contract promises to do a certain thing at or

Effect of failure to perform at fixed time, on contract in which time is essential.

before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable, at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

If, in case of a contract, voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless at the time of such acceptance he gives notice to the promisor of his intention to do so.*

* Compare ss. 62 and 63, *infra*.

Agreement to do impossible act.

A contract to do an act which, after the contract is made, becomes impossible,* or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.†

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

56. An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.

Illustrations.

- (a.) A agrees with B to discover treasure by magic. The agreement is void.
- (b.) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
- (c.) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.
- (d.) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
- (e.) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

57. Where persons reciprocally promise, firstly to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract; but the second is a void agreement.

Reciprocal promises to do things legal, and also other things illegal.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it. The first set of reciprocal promises, namely, to sell the house, and to pay 10,000 rupees for it, is a contract. The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Alternative promise, one branch being illegal.

Illustration.

A and B agree that A shall pay B, 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium. This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person make a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Application of payment where debt to be discharged is indicated.

* Otherwise than by the default of the contractor.

† But see s. 65, *infra*.

Illustrations.

(a.) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b.) A owes B, among other debts, the sum of 567 rupees. B writes to A, and demands payment of this sum. A send to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

61. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts* in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed.

Effect of novation, rescission, and alteration of contract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(a.) A owes money to B under a contract. It is agreed between A, B, and C that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b.) A owes B 10,000 rupees. A enters into an agreement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract, and extinguishes the old.

(c.) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees and no new contract has been entered into.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,† or may accept, instead of it, any satisfaction which he thinks fit.

Illustrations.

(a.) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b.) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c.) A owes B 5,000 rupees. C pays to B 1,000 rupees, and C accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.‡

* Probably the lawful debts referred to in s. 60.

† See s. 41, *supra*.

‡ But see s. 135, *infra*.

(d.) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e.) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a compensation* of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.†

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Illustrations.

(a.) A pays B 1,000 rupees, in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b.) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(c.) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A willfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d.) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.‡

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

* See. Read 'Composition.'

† See s. 75, *infra*.

‡ See ss. 3 and 5, *supra*.

CHAPTER V.—OF CERTAIN RELATIONS RESEMBLING THOSE CREATED
BY CONTRACT.

* - 68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Claim for necessaries supplied to person incapable of contracting, or on his account.

Illustrations.

(a.) A supplies B, a lunatic, with necessaries suitable to his condition in life A is entitled to be reimbursed from B's property.

(b.) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another, in payment of which he is interested.

69. A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue-law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Obligation of person enjoying benefit of non-gratuitous act.

Illustrations.

(a.) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b.) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee*.

Liability of person to whom money is paid or thing delivered by mistake or under coercion.

72. A person to whom money has been paid or any thing delivered by mistake or under coercion† must repay or return it.

Illustrations.

(a.) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b.) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

* See ss. 151 and 152, *infra*.

† See s. 15, *supra*.

CHAPTER VI.—OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. When a contract has been broken, the party who suffers by such

Compensation for loss or damage caused by breach of contract.

breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been

Compensation for failure to discharge obligation resembling those created by contract.

incurred, and has not been discharged, any person injured by the failure to discharge it, is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it, and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(a.) A contracts to sell and deliver 50 maunds of saltpetre to B at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b.) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c.) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d.) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of contract.

(e.) A, the owner of a boat, contracts with B to take a cargo of goods to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f.) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g.) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h.) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i.) A delivers to B a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j.) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k.) A contracts with B to make and deliver to B, by a fixed day for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l.) A, a builder, contracts to erect and finish a house by the first of January, in order that B may given possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down, and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m.) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n.) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o.) A contracts to deliver 50 maunds of saltpetre to B on the first of January at a certain price. B, afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p.) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q.) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed

time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r.) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

74. When a contract has been broken, if a sum is named in the contract

Title to compensation for breach of contract in which a sum is named as payable in case of breach.

as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the

party who has broken the contract reasonable compensation not exceeding the amount so named.

Exception.—When any person enters into any bail-bond, recognizance, or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(a.) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b.) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c.) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

75. A person who rightfully rescinds a contract is entitled to

Party rightfully rescinding contract, entitled to compensation.

compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII.—SALE OF GOODS.

When property in goods sold passes.

'Goods' defined.

76. In this chapter, the word 'goods' means and includes every kind of moveable property.*

77. 'Sale' is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

'Sale' defined.

Sale how effected.

78. Sale is effected by offer and acceptance of ascertained goods for a price,

or of a price for ascertained goods,
together with payment of the price or delivery of the goods; or with tender, part-payment, earnest or part-delivery; or with an agreement, express or implied, that the payment or delivery; or both, shall be postponed.

Where there is a contract for the sale of ascertained goods the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.†

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

(a.) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(b.) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(c.) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d.) B offers A, for his horse, 1,000 rupees, on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e.) B, on the first January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

Transfer of ownership of thing sold, which has yet to be ascertained, made, or finished.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made, or finished,‡ the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

80. Where, by a contract for the sale of goods, the seller is to do

Completion of sale of goods, which the seller is to put into state in which buyer is to take them.

anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

* 'Goods' would thus include money and negotiable instruments, Act I. of 1868, s. 2, cl. 6. This cannot have been intended.

† i. e., when the whole is delivered or when part is delivered in progress of delivery of the whole. See s. 92; *infra*.

‡ See s. 80.

Illustration.

A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

Completion of sale of goods, when seller has to do anything thereto in order to ascertain price.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(a.) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b.) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing-machine, which his carts must pass on their way from A's grounds to B's place of deposit. Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

Completion of sale, when goods are unascertained at date of contract.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.*

Illustration.

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Ascertainment of goods by subsequent appropriation.

Illustration.

A having a quantity of sugar in bulk more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B.

84. Where the goods are not ascertained at the time of making the contract of sale, and, by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and, by his doing so, the goods are ascertained.

Ascertainment of goods by seller's selection.

Illustration.

B agrees with A to purchase of him, at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

Transfer of ownership of moveable property, when sold together with immoveable.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Illustration

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations.

(a.) B offers, and A accepts, 100 rupees for a stack of fire wood standing on A's premises, the fire-wood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b.) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

Transfer of ownership of goods agreed to be sold while non-existent.

Illustrations.

(a.) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(b.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Contract to sell and deliver, at a future day, goods not in seller's possession at date of contract.

Illustration.

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Determination of price not fixed by contract.

Illustration.

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Delivery how made.

Illustrations.

(a.) A sells to B a horse, and causes or permits it to be removed from A's stable to B's. The removal to B's stable is a delivery.

(b.) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c.) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(d.) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e.) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f.) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it to him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

91. A delivery to a wharfinger or carrier of the goods sold has the same

Effect of delivery to wharfinger or carrier. effect as a delivery to the buyer, but does not

render the buyer liable for the price of good which does not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

92. A delivery of part of goods, in progress of the delivery of the whole,

Effect of part-delivery.

has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Illustrations.

(a.) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b.) A sells to B a stack of fire-wood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the fire-wood. This has not the legal effect of delivery of the whole.

(c.) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

Seller not bound to deliver until buyer applies for delivery.

93. In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.*

94. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods contracted to

Place of delivery. be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

Seller's Lien.

95. Unless a contrary intention appears by the contract, a seller has a lien† on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.‡

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

'Insolvency' defined.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Stoppage in Transit.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and

* See s. 46, *supra*.

† For the amount of the purchase-money.

‡ Or untendered.

are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations.

(a.) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b.) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c.) B, who lives at Puná, orders goods of A at Bombay. A sends them to Puná by C, a carrier appointed by B. The goods arrive at Puná, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

101. The seller's right of stoppage does not, except in the cases

Continuance of right of hereinafter mentioned, cease on the buyer's re-
stoppage. selling the goods while in transit, and receiving
the price, but continues until the goods have been delivered to the second
buyer, or to some person on his behalf.

102. The right of stoppage ceases if the buyer, having obtained a

Cessation of right on as- bill of lading or other document showing title to
assignment, by buyer, of bill the goods,* assigns it, while the goods are in
of landing. transit, to a second buyer, who is acting in good
faith, and who gives valuable consideration for them.

Illustrations.

(a.) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b.) A sells and consigns certain goods to B. A being still unpaid B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

103. Where a bill of lading or other instrument of title to any goods

Stoppage where bill of is assigned by the buyer of such goods by way of
landing is pledged to secure pledge, to secure an advance made specifically
specific advance. upon it, in good faith, the seller cannot, except on
payment or tender to the pledgee of the advance so made, stop the goods in
transit.

Illustrations.

(a.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

* See s. 108, exception 1, *infra*.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

104. The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository in whose possession they are.
Stoppage how effected.

105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.
Notice of seller's claim.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.
Right of seller on stoppage.

Illustration.

A sells to B 100 bales of cotton, 60 bales having come into B's possession, and 40 being still in transit. B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Resale.

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such resale.
Resale on buyer's failure to perform.

Title.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases :—
Title conveyed by seller of goods to buyer.

Exception 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods, of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary : * Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

* It has been held that this exception does not apply 'where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose.' *Greenwood v. Holquette*, 12 Beng. 46.

Exception 3 — When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(a.) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b.) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d.) A, B, and C are joint Hindu brothers who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide*. The property in the cow is transferred to D.

(e.) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

Warranty.

109. If the buyer, or any person claiming under him, is, by reason of Seller's responsibility for badness of title. the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract

Establishment of implied warranty of goodness or quality.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness implied on sale of provisions.

111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty of bulk implied on sale by sample.

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.*

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

* See s. 112, *infra*.

Illustrations.

(a.) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Murshidabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(b.) A buys, by sample, and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal." There is a breach of warranty.

114. Where goods have been ordered for a specified purpose, for which

Warranty where goods ordered for a specified purpose. goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.*

Illustration.

B orders of A, a copper manufacturer, copper for sheathing a vessel. A on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

Warranty on sale of article of well-known ascertained kind.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

116. In the absence of fraud and of any express warranty of quality,

Seller when not responsible for latent defects.

the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

117. Where a specific article, sold with a warranty, has been delivered

Buyer's right on breach of warranty.

and accepted, and the warranty is broken, the sale is not thereby rendered voidable; but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract, with a warranty, for the sale of

Right of buyer on breach of warranty in respect of goods not ascertained.

goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may

accept the goods or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them; provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

* See s. 118, *infra*.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty ; but if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(a) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b.) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample ; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c.) B makes two pairs of shoes for A by A's order. When the shoes are delivered they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

Miscellaneous.

119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper, with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Effect of wrongful refusal to accept.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

Right of seller as to rescission, on failure of buyer to pay price at time fixed.

122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale and transfer of lots sold by auction.

Effect of use, by seller, of pretended biddings to raise price.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

CHAPTER VIII.—OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity.'

'Contract of indemnity' defined.

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—
Rights of indemnity-holder when sued

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

126. A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of 'surety,' 'principal debtor,' his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor,' and the person to whom the guarantee is given is called the 'creditor.' A guarantee may be either oral or written.

127. Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.
Consideration for guarantee.

Illustrations.

(a.) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b.) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c.) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.
Surety's liability.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transactions is called a 'Continuing guarantee.' 'continuing guarantee.'

Illustrations.

(a.) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c.) A guarantees payment to B of the price of five sacks of flour, to be delivered by B to C, and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(a) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee by surety's death. guarantee, so far as regards future transactions.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance, made, without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Discharge of surety by variance in terms of contract.

Illustrations.

(a.) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee though the misconduct of B is in respect of a duty not affected by the later Act.

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for A's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him, and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d.) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e) C contracts to lend B 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the first January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.*

Discharge of surety by release or discharge of principal debtor.

Illustrations.

(a.) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed, and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c.) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

Surety not discharged when contract made with third person to give time to principal.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

* See *supra*, ss. 39, 53, 54, 55, 62, 63, 67, 118, 120.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does Release of one co-surety does not discharge others. it free the surety so released from his responsibility to the other sureties.*

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his Discharge of surety by creditor's act or omission impairing surety's eventual remedy. duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(a.) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment †

(b.) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A, as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has Rights of surety on payment or performance. taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.‡

141. A surety is entitled to the benefit of every security which the Surety's right to benefit of creditor's securities. creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.§

Illustrations.

(a.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(c.) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

42. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Guarantee obtained by misrepresentation, invalid.

* See s. 44, *supra*.

† See s. 133, *supra*.

‡ *E.g.*, the right to stop in transit.

§ See s. 139, *supra*.

Guarantee obtained by concealment, invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance is invalid.

Illustrations.

(a.) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duty accounting. C gives his guarantee for B's duty accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b.) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.*

Guarantee on contract that creditor shall not act on it until co-surety joins.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Implied promise to indemnify surety.

Illustrations.

(a.) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b.) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A, to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c.) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.†

Co-sureties liable to contribute equally.

Illustrations.

(a.) A, B, and C, are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B, and C, are liable, as between themselves, to pay 1,000 rupees each.

(b.) A, B, and C, are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B, and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

* See s. 33, *supra*.

† See s. 43, *supra*.

147. Co-sureties who are bound in different sums are liable to pay

Liability of co-sureties equally as far as the limits of their respective*
bound in different sums. obligations permit.*

Illustrations.

(a.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B, and C, are each liable to pay 10,000 rupees.

(b.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B, and C, have to pay each the full penalty of his bond.

CHAPTER IX.—OF BAILMENT.**148. A 'bailment' is the delivery of goods by one person to another**

'Bailment,' 'bailor,' and for some purpose, upon a contract that they shall, 'bailee' defined.

when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor.' The person to whom they are delivered is called the 'bailee.'

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

149. The delivery to the bailee may be made by doing anything which

Delivery to bailee how has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

150. The bailor is bound to disclose to the bailee faults in the goods

Bailor's duty to disclose bailed, of which the bailor is aware, and which faults in goods bailed.

materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a.) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b.) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

* See s. 13, *supra*.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed.

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Termination of bailment by bailor's act inconsistent with conditions.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. That is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making unauthorized use of goods bailed.

Illustrations.

(a.) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b.) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Katak instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with bailor's consent, of his goods with bailee's.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Effect of mixture, without bailor's consent, when the goods can be separated.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of mixture, without bailor's consent, when the goods cannot be separated.

Illustration.

A bails a barrel of Cape flour, worth Rs. 45, to B. B, without A's consent mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

158. Where, by the conditions of the bailment, the goods are to be

Repayment, by bailor, of kept or to carried, or to have work done upon
necessary expenses. them by the bailee for the bailor, and the bailee is
to receive no remuneration, the bailor shall repay to the bailee the necessary
expenses incurred by him for the purpose of the bailment.

159. The lender of a thing for use may at any time require its return,

Restoration of goods lent if the loan was gratuitous, even though he lent it
gratuitously. for a specified time or purpose. But if, on the
faith of such loan made for a specified time or purpose, the borrower has
acted in such a manner that the return of the thing lent before the time
agreed upon would cause him loss exceeding the benefit actually derived by
him from the loan, the lender must, if he compels the return, indemnify the
borrower for the amount in which the loss so occasioned exceeds the benefit
so derived.*

160. It is the duty of the bailee to return, or deliver according to the

Return of goods bailed on expiration of time or accom-
plishment of purpose. plishment of purpose. demand, as soon as the time for which they were
bailed has expired, or the purpose for which they
were bailed has been accomplished.†

161. If, by the fault of the bailee, the goods are not returned, delivered,

Bailee's responsibility when goods are not duly returned. or tendered at the proper time, he is responsible
to the bailor for any loss, destruction, or deteriora-
tion of the goods from that time.

Termination of gratuitous
bailment by death.

162. A gratuitous bailment is terminated by
the death either of the bailor or of the bailee.

163. In the absence of any contract to the contrary, the bailee is bound

Bailor entitled to increase or profit from goods bailed. to deliver to the bailor, or according to his direc-
tions, any increase or profit which may have
accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf.
B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee

Bailor's responsibility to may sustain by reason that the bailor was not
bailee. entitled to make the bailment, or to receive back
the goods, or to give directions respecting them.

165. If several joint owners of goods bail them, the bailee may deliver

Bailment by several joint owners. them back to, or according to the directions of,
one joint owner without the consent of all, in the
absence of any agreement to the contrary.

166. If the bailor has no title to the goods, and the bailee, in good

Bailee not responsible on re-delivery to bailor with-
out title. faith, delivers them back to, or according to the
directions of, the bailor, the bailee is not respon-
sible to the owner in respect of such delivery.‡

167. If a person, other than the bailor, claims goods bailed, he may

Right of third person claim-
ing goods bailed. apply to the Court to stop the delivery of the goods
to the bailor, and to decide the title to the goods.

* See Story, *Bailments*, § 258.

† But see ss. 24, 152, *supra*, and 170, *infra*, to the provisions of which this section must be
subject.

‡ See Act I. of 1872, s. 117.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.*

Right of finder of goods.

May sue for specific reward offered.

169. When a thing, which is commonly the subject of sale, is lost, if the owner cannot, with reasonable diligence, be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

When finder of thing commonly on sale may sell it.

(1) when the thing is in danger of perishing or of losing the greater part of its value; or,

(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.†

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Bailee's particular lien.

Illustrations.

(a) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

171. Bankers, factors, wharfingers, attorneys of a High Court, and policy-brokers, may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods‡ bailed to them;§ but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

General lien of bankers, factors, wharfingers, attorneys, and policy-brokers

Bailments of Pledges.

172. The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge.' The bailor is in this case called the 'pawnor.' The bailee is called the 'pawnee.'

'Pledge,' 'pawnor,' and 'pawnee' defined.

173. The pawnee may retain the goods pledged, not only for payment of the debt, or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee's right of retainer.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee not to retain for debt or promise other than that for which goods pledged.

Presumption in case of subsequent advances.

* Story, *Bailments*, § 121a.

† *New York Civil Code*, § 948.

‡ Whether belonging to the bailor or not.

§ As such?

Pawnee's right as to extraordinary expenses incurred

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

178. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents: Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.*

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Suits by Bailees or Bailors against Wrong-doers.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.—AGENCY.

Appointment and Authority of Agents.

182. An 'agent' is a person employed to do any act for another,† or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal.'

* See 5 & 6 Vic., c. 39, ss. 1 and 3.

† Cf. s. 225, *infra*. As to the effect of an agent's fraud, see ss. 17 and 238.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.*

Who may employ agent.

184. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary.

185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

186. The authority of an agent may be expressed or implied.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Definitions of express and implied authority.

Illustration.

A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

Extent of agent's authority.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.†

Agent's authority in an emergency.

Illustrations.

(a.) An agent for sale may have goods repaired if it be necessary.

(b) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Katak. B may sell the provisions at Calcutta, if they will not bear the journey to Katak without spoiling.

Sub-Agents.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

When agent cannot delegate.

* Cf. s. 11, *supra*.

† But see s. 214, *infra*.

191. A 'sub-agent' is a person employed by, and acting under the control of, the original agent in the business of the agency.
 'Sub-agent' defined.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by, and responsible for, his acts, as if he were an agent originally appointed by the principal.
 Representation of principal by sub-agent properly appointed.

Agent's responsibility for sub-agent. The agent is responsible to the principal for the acts of the sub-agent:

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.
 Sub-agent's responsibility.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed,* nor is that person responsible to the principal.
 Agent's responsibility for sub-agent appointed without authority.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.
 Relation between principal and person duly appointed by agent to act in business of agency.

Illustrations.

(a.) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b.) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.
 Agents duty in naming such person.

Illustrations.

(a.) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently, and the ship turns out to be unseaworthy, and is lost. B is not, but the surveyor is, responsible to A.

(b.) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.
 Right of person as to acts done for him without his authority.
 Effect of ratification.

* Unless, of course, he ratifies them, see s. 196, *infra*.

† i.e. lawful acts.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are pressed or implied.

Illustrations.

(a.) A, without authority, buys goods for B. Afterwards B sells them to C on his own account. B's conduct implies a ratification of the purchase made for him by A.

(b.) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite to valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

200. An act done by one person on behalf of another without such

Ratification of unauthorized act cannot injure third person.

other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(a.) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b.) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

201. An agency is terminated by the principal revoking his authority ;

Termination of agency.

or by the agent renouncing the business of the agency ; or by the business of the agency being completed ; or by either the principal or agent dying or becoming of unsound mind ; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

202. Where the agent has himself an interest in the property which

Termination of agency where agent has an interest in subject-matter.

forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

(a.) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, save as is otherwise provided by the last pre-

When principal may revoke agent's authority.

ceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Revocation where authority has been partly exercised.

Illustrations.

(a.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation* to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Compensation for revocation by principal, or renunciation by agent.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Notice of revocation or renunciation.

Revocation and renunciation may be expressed or implied.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

When termination of agent's authority takes effect as to agent and as to third persons.

Illustrations.

(a.) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b.) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c.) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Agent's duty on termination of agency by principal's death or insanity.

* See s. 73, *supra*.

210. The termination of the authority of an agent causes the termination of sub-agent's authority. (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's Duty to Principal.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal,* or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(a.) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b.) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(a.) A a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, e.g., by variation of rate of exchange—but not further.

(b.) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

* Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

* But see s. 189, *supra*.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.*

Agent's duty to communicate with principal.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case show, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Right of principal when agent deals on his own account in business of agency without principal's consent.

Illustrations.

(a.) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b.) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

217. An agent may retain,† out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right of retainer out of sums received on principal's account.

Agent's duty to pay sums received for principal.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

When agent's remuneration becomes due.

220. An agent, who is guilty of misconduct in the business of the agency,‡ is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent not entitled to remuneration for business misconducted.

* See s. 189, *supra*. † See s. 221, *infra*. ‡ See ss. 195, 211, 212, 213, 214, 218, *supra*.

Illustrations.

(a.) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees, and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b.) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. In the absence of any contract to the contrary, an agent is entitled Agent's lien on principal's property. to retain goods, papers, and other property whether moveable or immoveable, or the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same, has been paid or accounted for to him.*

Principal's Duty to Agent.

Agent to be indemnified against consequences of lawful acts.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

(a.) B, at Singapur, under instructions from A, of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

(b.) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B.† B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

223. When one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith.

Illustrations.

(a.) A, a decree-holder, and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(b.) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B, and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

* As to the general lien of an agent who is a banker, factor, attorney, or policy-broker, see s. 171, *supra*.

† It must be assumed that the disclosed principal could not be sued, see s. 230, *infra*.

224. Where one person employs another to do an act which is criminal,

Non-liability of employer the employer is not liable to the agent, either of agent to do a criminal act. upon an express or an implied promise to indemnify him against the consequences of that act.*

Illustrations.

(a.) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b.) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C, and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of Agency on Contracts with third Persons.

226. Contracts entered into through an agent, and obligations arising

Enforcement and consequences of agent's contracts. from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(a.) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from A.

(b.) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. When an agent does more than he is authorized to do, and when

Principal how far bound, the part of what he does, which is within his when agent exceeds authority. authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority, is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Where an agent does more than he is authorized to do, and what

Principal not bound when excess of agent's authority is not separable.

he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

* See s. 24, *supra*,

229. Any notice given to or information obtained by the agent, provided Consequences of notice it be given or obtained in the course of the given to agent. business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(a.) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases :—

(1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad :

(2.) Where the agent does not disclose the name of his principal :

(3.) Where the principal, though disclosed, cannot be sued.

231. If an agent makes a contract with a person who neither knows, Rights of parties to a contract made by agent not disclosed. nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, neither knowing Performance of contract with agent supposed to be principal. nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

233. In cases where the agent is personally liable, a person dealing Right of person dealing with him may hold either him or his principal or with agent personally liable. both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

235. A person untruly* representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent, not entitled to performance.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has, by his words or conduct, induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

Illustrations.

(a.) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principal; † but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Effect, on agreement, of misrepresentation or fraud by agent.

Illustrations.

(a.) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(b.) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI.—OF PARTNERSHIP.

239. 'Partnership' is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

'Partnership' defined.

* See s. 208, *supra*.

† See s. 250, *infra*.

‡ This would apply to members of joint-stock companies: but the law applicable to them is saved by s. 266, *infra*.

'Firm' defined.

Persons who have entered into partnership with one another are called collectively a 'firm.'

Illustrations.

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account. A and B are partners in respect of such cotton.

(b.) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(c.) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d.) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(e.) A and B are joint owners of a ship. This circumstance does not make them partners.

240. A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.*

Lender not a partner by advancing money for share of profits.

241. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business, is to be considered a loan within the meaning of the last preceding section.

Property left in business by retiring partner, or deceased partner's representative.

242. No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Servant or agent remunerated by share of profits, not a partner.

243. No person, being a widow or child of a deceased partner of a trader, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Widow or child of deceased partner receiving annuity out of profits, not a partner.

244. No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.†

Person receiving portion of profits for sale of good-will, not a partner.

245. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm.

Responsibility of person leading another to believe him a partner.

246. Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.‡

Liability of person permitting himself to be represented as a partner.

* See *Molloy v. Court of Wards*, 10 Beng. 312.

† 28 & 29 Vic., c. 36.

‡ See Act I. of 1872, s. 109.

247. A person who is under the age of majority according to the law to which he is subject,* may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

248. A person who has been admitted to the benefits of partnership under the age of majority† becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

249. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

251. Each partner, who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(a.) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(b.) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c.) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d.) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

252. Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all‡ of them, which consent must either be expressed or be implied from a uniform course of dealing.

* See Act I. of 1872, s. 109.

† See Act IX. of 1875,

‡ Cf. s. 253, clause 5, *infra*.

Illustration.

A, B, and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the nett profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A receiving one half of the nett profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

Rules determining partner's mutual relations, where no contract to contrary.

253. In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules:—

(1.) All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss:

(2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership:

(3.) Each partner has a right to take part in the management of the partnership business:

(4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business:

(5.) When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners:*

(6.) No person can introduce a new partner into a firm without the consent of all the partners:

(7.) If, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members:

(8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time:

(9.) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court:

(10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership.

254. At the suit of a partner the Court may dissolve the partnership in the following cases:—

(1.) When a partner becomes of unsound mind:

(2.) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors:

(3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person:

(4.) When any partner becomes incapable of performing his part of the partnership contract:

* S. 252, *supra*.

(5.) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners :

(6.) When the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

256. If a partnership, entered into for a fixed term, be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Account to firm of benefit derived from transaction affecting partnership.

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(a.) A, B, C, are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(b.) A, B, and C, carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.*

Non-liability of deceased partner's estate for subsequent obligations.

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

262. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the

share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Continuance of partner's rights and obligations after dissolution.

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

Notice of dissolution.

265. In the absence of any contract to the contrary after the termination of a partnership, each partner or his representatives may apply to the Court to wind-up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

Right of partners to apply for winding-up by Court after termination of partnership.

Explanation.—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.

Limited liability partnerships, incorporated partnerships, and joint-stock companies.

266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.*

SCHEDULE—ENACTMENTS REPEALED.

Statutes.

No. and year of Statute.	TITLE.	Extent of repeal.
Stat. 29 Car. II., cap. 3.	An Act for the prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4, and 17.
Stat. 11 & 12 Vic., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.

* See Act X. of 1866 and the following special Acts: V. of 1833, amended by V. of 1854 (Bengal Bonded Warehouse); V. of 1857, amended by XI. of 1867 (Oriental Gas Company); XI. of 1876 (Presidency Banks); and Madras Act VI. of 1869 (Madras Equitable Assurance Society).

SCHEDULE—ENACTMENTS REPEALED.—(*continued*).

Acts.

No. and year of Act.	Title.	Extent of repeal.
Act XIII. of 1840...	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 4 Geo. iv., c. 83, as altered and amended by the Stat. 6 Geo. iv, c. 94.	The whole.
Act XIV. of 1840 ...	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 9 Geo. iv., c. 14.	The whole.
Act XX. of 1844 ...	An Act to amend the law relating to Advances <i>bond fide</i> made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 5 & 6 Vic., c. 39, as altered by this Act.	The whole.
Act XXI. of 1848 ...	An Act for avoiding Wagers	The whole.
Act V. of 1866 ...	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India,	Sections 9 & 10.
Act XV. of 1866 ...	An Act to amend the law of Partnership in India.	The whole.
Act VIII. of 1867...	An Act to amend the law relating to Horse-racing in India.	The whole.

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THE INDIAN OATHS' ACT, NO. X. OF 1873.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH APRIL 1873.

An Act to consolidate the Law relating to Judicial Oaths, and for other purposes.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations, and to repeal the law relating to official oaths, affirmations, and declarations; It is hereby enacted as follows:—

I.—Preliminary.

Short title. 1. This Act may be called "The Indian Oaths' Act, 1873."

Local extent. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

2.—[*Repealed by Act No. XII. of 1873.*]

3 Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations, or declarations prescribed by any law which, under the provisions of the Indian Councils' Act, 1861, the Governor-General in Council has not power to repeal.

II.—Authority to administer Oaths and Affirmations.

4. The following Courts and persons are authorized to administer by themselves or by an officer empowered by them in their behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(a.) All Courts and persons having by law or consent of parties authority to receive evidence;

(b.) The Commanding Officer of any military station occupied by troops in the service of Her Majesty: provided

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by— 5. Oaths or affirmations shall be made by the following persons:—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence:

interpreters;

jurors.

(b) interpreters of questions put to, and evidence given by, witnesses, and

(c) jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by natives or by persons objecting to oaths.

6. Where the witness, interpreter, or juror is a Hindú or Muhammadan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation. In every other case, the witness, interpreter, or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

7. All oaths and affirmations made under section five shall be administered according to such forms as the High Court may from time to time prescribe.*

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

8. If any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section eight, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

10. If such party or witness agrees to make such oath of affirmation, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section eight, he shall not be compelled to make it, but the Court shall record,

* Calcutta Gazette, August 1873, p. 984: North-Western Provinces Gazette, 3rd May 1873, p. 604: Punjab Gazette, 15th May 1873, Part III., p. 209.

as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—*Miscellaneous.*

13. No omission* to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.†

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath" the words "or affirmation" were inserted.

16. Subject to the provisions of sections three and five, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath or to make or subscribe any affirmation or declaration whatever.

* This "includes any omission, and is not limited to accidental or negligent omissions."—*Reg. v. Seva Bhogta*, 14 Beng 294

† See Act XLV. of 1860, s. 191.

THE MARRIED WOMEN'S PROPERTY ACT, NO. III. OF 1874.

RECEIVED THE G.-G.'s ASSENT ON THE 24TH FEBRUARY 1874.

An Act to explain and amend the law relating to certain Married Women, and for other purposes.

WHEREAS it is expedient to make such provision as hereinafter appears
for the enjoyment of wages and earnings by women
married before the first day of January 1866, and
for insurances on lives by persons married before or after that day :

And whereas by the Indian Succession Act, 1865, section four, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried :

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives ; It is hereby enacted as follows :—

I.—Preliminary.

Short title. 1. This Act may be called “The Married women's Property Act, 1874.”

Extent and application. 2. It extends to the whole of British India, and so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindú, Muhammadan, Buddhist, Sikh, or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the Governor-General in Council may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect, or tribe, or part of a race, sect, or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

The Governor-General in Council may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the *Gazette of India*.

The fourth section of the said Indian Succession Act shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed, at the time of the marriage, the Hindú, Muhammadan, Buddhist, Sikh, or Jaina religion.

3.—[*Repealed by Act No. XII. of 1876.*]

II.—*Married Women's Wages and Earnings.*

4. The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation, or trade carried on by her, and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic, or scientific skill,

and all savings from and investments of such wages, earnings, and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings, and property.*

III.—*Insurances by Wives and Husbands.*

5. Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the Married woman may effect policy of insurance same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.†

6. A policy of insurance effected by any married man on his own life, Insurance by husband for and expressed on the face of it to be for the benefit of his wife, of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII. of 1864 (*to constitute an Office of Official Trustee*), section ten.‡

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

IV.—*Legal Proceedings by and against Married Women.*

7. A married woman may maintain a suit in her own name for the recovery of property of any description which Married women may take legal proceedings. by force of the said Indian Succession Act, 1865, or of this Act, is her separate property: and she shall have, in her own name, the same remedies, both civil and criminal, against all persons for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes, and orders in respect of such property as she would be liable to if she were unmarried.§

* See 33 & 34 Vic., c. 1.

† *Ibid.* s. 10, para. 1.

‡ 33 & 34 Vic., c. 1, s. 10, para. 2.

§ *Ibid.* s. 11.

8. If a married woman (whether married before or after the first day of January 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract, and continued unmarried at the execution of the decree.*

Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied, or render a married woman liable to arrest or to imprisonment in execution of a decree.

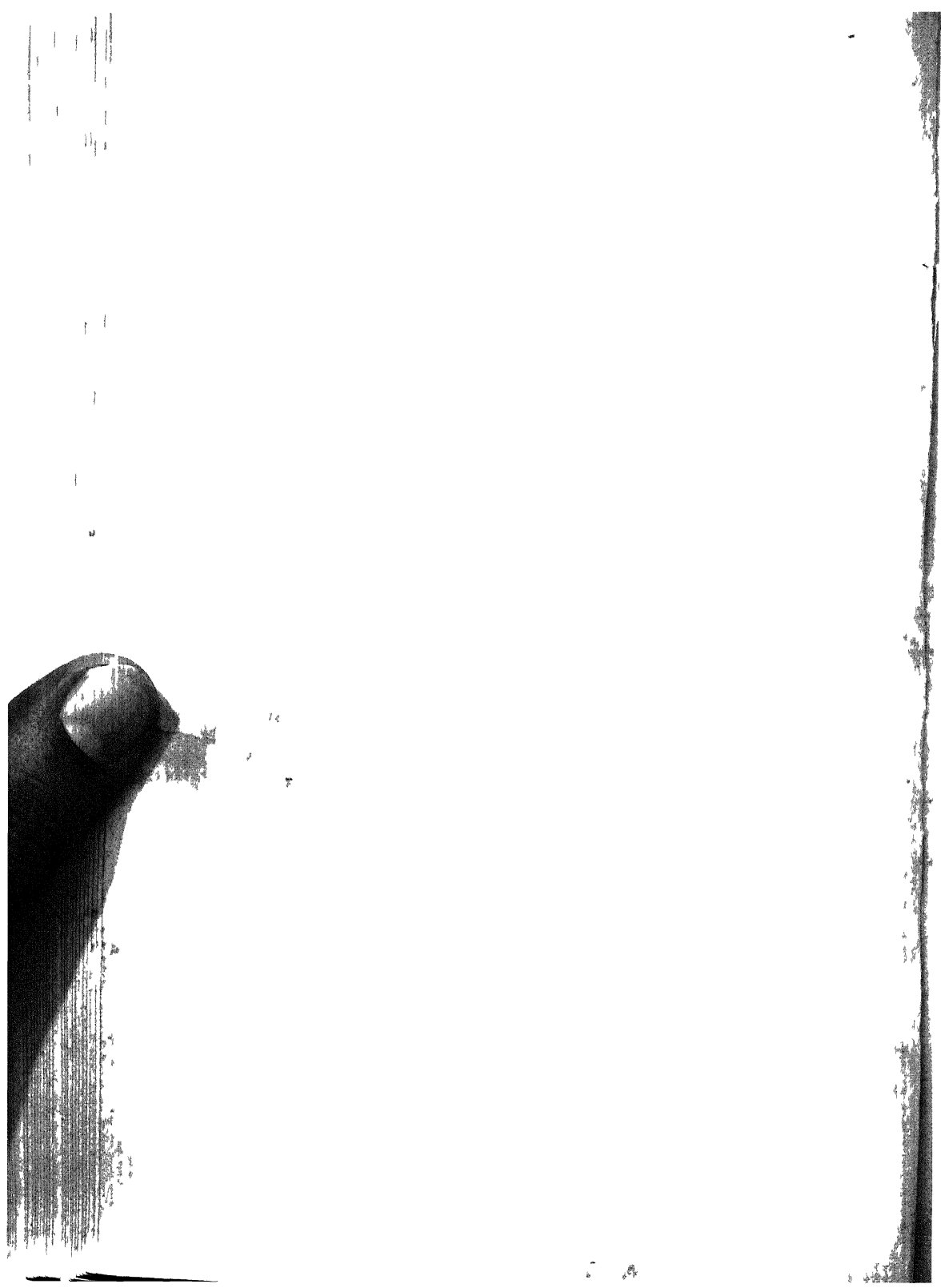
V.—Husband's Liability for Wife's Debts.

9. A husband married after the thirty-first day of December 1865 shall not, by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried :†

Provided that nothing contained in this section shall affect any suit instituted before the passing of this Act, nor invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.

* *Archer v. Watlins*, 8 Beng. 372.

† 33 & 34 Vic., c. 93, s. 12.



THE INDIAN MAJORITY ACT,

NO. IX. OF 1875.

RECEIVED THE G.-G.'S ASSENT ON THE 2ND MARCH 1875.

An Act to amend the Law respecting the age of Majority.

WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists, It is hereby enacted as follows —

1. This Act may be called "The Indian Majority Act, 1875"

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty,

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

2. Nothing herein contained shall affect—

(a) the capacity of any person to act in the following matters (namely),—Marriage, Dower, Divorce, and Adoption;

(b) the religion or religious rites and usages of any class of Her Majesty's subjects in India, or

(c) the capacity of any person who, before this Act comes into force, has attained majority under the law applicable to him.

3. Subject as aforesaid, every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act (No X. of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before:

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed shall age of eighteen years and not before.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section three, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section three, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(a.) Z is born in British India on the first day of January, 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January, 1871.

(b.) Z is born in British India on the twenty-ninth day of February, 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February, 1873.

(c.) Z is born on the first day of January, 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January, 1868.

THE SPECIFIC RELIEF ACT, NO. I. OF 1877.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH FEBRUARY 1877.

*An Act to define and amend the Law relating to certain kinds of
Specific Relief.*

WHEREAS it is expedient to define and amend the law relating to certain
Preamble. kinds of specific relief obtainable in civil suits ; It
is hereby enacted as follows :—

PART I.—PRELIMINARY.

Short title. 1. This Act may be called "The Specific
Relief Act, 1877."

Local extent. It extends to the whole of British India,
except the Scheduled Districts as defined in Act
No. XIV. of 1874.

Commencement. And it shall come into force on the first day
of May 1877.

2. On and from that day the Acts specified in the schedule hereto an-
Repeal of enactments. nexed shall be repealed to the extent mentioned in
its third column.

3. In this Act, unless there be something re-
pugnant in the subject or context,—

'obligation.' 'obligation' includes every duty enforceable
by law :

'trust.' 'trust' includes every species of express, im-
plied, or constructive fiduciary ownership :

'trustee.' 'trustee' includes every person holding, ex-
pressly, by implication, or constructively, a fidu-
ciary character :

Illustrations.

(a.) Z bequeaths land to A, 'not doubting that he will pay thereout an annuity
of Rs. 1,000 to B for his life.' A accepts the bequest. A is a trustee, within the
meaning of this Act, for B, to the extent of the annuity.

(b.) A is the legal, medical, or spiritual adviser of B. By availing himself of
his situation as such adviser, A gains some pecuniary advantage which might other-
wise have accrued to B. A is a trustee, for B, within the meaning of this Act, of
such advantage.

(c.) A, being B's banker, discloses for his own purpose the state of B's account.
A is a trustee, within the meaning of this Act, for B, of the benefit gained by him
by means of disclosure.

(d.) A, the mortgagee of certain leaseholds, renews the lease in his own name.
A is a trustee, within the meaning of this Act, of the renewed lease, for those in-
terested in the original lease.

(e.) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee, for his co-partners, within the meaning of this Act, of the profit so made.

(f.) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g.) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h.) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

'settlement' means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in moveable or immovable property is disposed of or is agreed to be disposed of: And all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which is not a contract;

(b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(c) to affect the operation of the Indian Registration Act on documents: Specific relief how given.

5. Specific relief is given—
(a) by taking possession of certain property and delivering it to a claimant;

(b) by ordering a party to do the very act which he is under an obligation to do;

(c) by preventing a party from doing that which he is under an obligation not to do;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(e) by appointing a Receiver.

Preventive relief.

6. Specific relief granted under clause c of section 5 is called preventive relief.

Relief not granted to enforce penal law.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

PART II.—OF SPECIFIC RELIEF.

CHAPTER I.—OF RECOVERING POSSESSION OF PROPERTY.

(a.) *Possession of Immoveable Property.*

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.

9. If any person is dispossessed without his consent of immoveable

Suit by person dispossessed of immoveable property. property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b.) Possession of Moveable Property.

10. A person entitled to the possession of specific moveable property

Recovery of specific moveable property. may recover the same in the manner prescribed by the Code of Civil Procedure.

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(a.) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b.) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c.) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such property therein as entitles him to recover it from B.

(d.) A deposits books and papers for safe custody with B. B loses them, and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(e.) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article

Liability of person in possession, not as owner to deliver to person entitled to immediate possession. of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations

Of clause a—A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that he had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause *b*.—Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause *c*.—A is entitled to a picture by a dead-painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II.—OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a.) *Contracts which may be specifically enforced.*

12. Except as otherwise provided in this chapter, the specific performance of any contract may, in the discretion of the Court, be enforced—

(a) when the act agreed to be done is in the performance, wholly or partly, of a trust ;

(b) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done ;

(c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief ; or

(d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations

of clause *a*.—A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation*

of clause *b*.—A agrees to buy, and B agrees to sell, a picture by a dead-painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause *c*.—A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money ; and the Court may appoint a proper person to superintend the construction of the archway, road, siding, and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

* The first illustration is repealed by Act II. of 1882 (The Indian Trust Act) as to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Panjab, the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam. The said illustration will, when the said Act II. of 1882 is extended to other territories, be repealed in such territories.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause *d*.—A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

13. Notwithstanding anything contained in section 56 of the Indian

Contracts of which the subject has partially ceased to exist.

Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations.

(a.) A contracts to sell a house to B for a lākḥ of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b.) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

14. Where a party to a contract is unable to perform the whole of his

Specific performance of part of contract where part unperformed is small.

part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money,

the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustrations.

(a.) A contracts to sell to B a piece of land consisting of 100 bighás. It turns out that 98 bighás of the land belong to A, and the two remaining bighás to a stranger, who refuses to part with them. The two bighás are necessary for the use or enjoyment of the 98 bighás, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighás, and to make compensation to him for not conveying the two remaining bighás; or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b.) In a contract for the sale and purchase of a house and lands for two lākhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his

Specific performance of part of contract where part unperformed is large.

part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money,

he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(a.) A contracts to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(b.) A contracts to sell to B an estate with a house and garden for a lách of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Specific performance of independent part of contract.

Bar in other cases of specific performance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights:—

Purchaser's rights against vendor with imperfect title.

(a) if the vendor or lessor has, subsequently to the sale or lease, acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage, and to obtain a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest, and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

Power to award compensation in certain cases.

If in any such suit the Court decides that specific performance ought not to be granted, but there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and

that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations

of the second paragraph :—A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract, and broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph :—A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the explanation :—A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

20. A contract, otherwise proper to be specifically enforced, may be

Liquidation of damages not thus enforced, though a sum be named in it as the
a bar to specific performance. amount to be paid in case of its breach, and the
party in default is willing to pay the same.

Illustration.

A contracts to grant B an underlease of property held by A under C, and that he will apply to C for a license necessary to the validity of the underlease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license, and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(b.) *Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable. **21.** The following contracts cannot be specifically enforced :—

- (a) a contract for the non-performance of which compensation in money is an adequate relief ;
- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms ;
- (c) a contract the terms of which the Court cannot find with reasonable certainty ;
- (d) a contract which is in its nature revocable ;
- (e) a contract made by trustees either in excess of their powers or in breach of their trust ;
- (f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers ;

- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date ;
 (h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure, no contract to refer a controversy to arbitration shall be specifically enforced ; but if any person who has made such a contract, and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations

to a.—A contracts to sell, and B contracts to buy, a lākh of rupees in the four per cent. loan of the Government of India :

A contracts to sell, and B contracts to buy, 40 chests of Indigo at Rs. 1,000 per chest :

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honor A's drafts to that amount.

The above contracts cannot be specifically enforced, for in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

to b.—A contracts to render personal service to B :

A contracts to employ B on personal service ;

A, an author contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts:

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A, and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed :

By a charter-party entered into in Calcutta between A the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

A lets land to B, and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will, for three years next after the date of the contract, grow particular crops on the land in his possession, and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend.

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry B.

The above contracts cannot be specifically enforced.

to c.—A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation, and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to d.—A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

to *e*.—A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lăkh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors, shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to *f*.—A company, existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to *g*.—A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should, during the term, keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to *h*.—A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c.) *Of the Discretion of the Court.*

22. The jurisdiction to decree specific performance is discretionary, and

Discretion as to decreeing specific performance. the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles, and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(a.) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury, from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b.) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c.) A contracts sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d.) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present seeing the vendor's attorney bidding, think that he is a mere puffer, and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff

Illustrations.

(e.) A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A that the Court will not compel its specific performance in favour of C.

(f.) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though at the date of the contract the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g.) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(h.) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i.) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j.) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k.) A contracts with B to buy from B's manufactory, and not elsewhere, all the goods of a certain class used by B in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance :—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d.) For whom Contracts may be specifically enforced.

Who may obtain specific performance.

23. Except as otherwise provided by this chapter, the specific performance of a contract may be obtained by—

(a) any party thereto ;

(b) the representative in interest, or the principal, of any party thereto : provided that, where the learning, skill, solvency, or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman ;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title, and the reversioner is entitled to the benefit of such covenant ;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof, and will sustain material injury by reason of its breach ;

(g) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

(h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(e.) *From whom Contracts cannot be specifically enforced.*

Personal bars to the relief.

24. Specific performance of a contract cannot be enforced in favour of a person—

(a) who could not recover compensation for its breach ;

(b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;

(c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; or

(d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations

to clause a.—A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause b.—A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house, and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner ; he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause c.—A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title, or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immovable, cannot be specifically enforced in favour of a vendor or lessor—

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the same;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;

(c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(a) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(b.) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(c.) A, being in possession of certain land contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d.) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

(f.) *For whom Contracts cannot be specifically enforced except with a variation.*

26. Where a plaintiff seeks specific performance of a contract in writing, Non-enforcement except to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely):—

(a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(b) where by fraud, mistake of fact, or surprise, the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;

(c) where the defendant, knowing the terms of the contract, and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part which adds to the contract, but which he refuses to fulfill;

(d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;

(e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(a.) A, B, and C, sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B, and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(c.) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(d.) A and B enter into negotiations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e.) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing; so, with B's consent, A pulls it down, and erects a new house in its place: B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(g.) *Against whom Contracts may be specifically enforced.*

Relief against parties and persons claiming under them by subsequent title.

27. Except as otherwise provided by this chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract, and known to the plaintiff, might have been displaced by the defendant;
- (d) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;
- (e) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract, and the contract is warranted by the terms of the incorporation.

Illustrations

to clause b.—A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract A becomes a lunatic, and C is appointed his committee. B may specifically enforce the contract against C.

to clause c.—A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alienate in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C, and dies. C may enforce specific performance of the contract against B.

(h.) *Against whom Contracts cannot be specifically enforced.*

What parties cannot be compelled to perform.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases :—

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be, either by itself or coupled with other circumstances, evidence of fraud, or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of fact, misapprehension, or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations

to clause c.—A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i.) *The effect of dismissing a Suit for Specific Performance.*

29. The dismissal of a suit for specific performance of a contract, or part thereof, shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

Bar of suit for breach after dismissal.

(j.) *Awards and Directions to execute Settlements.*

Application of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.—OF THE RECTIFICATION OF INSTRUMENTS.

31. When, through fraud or a mutual mistake of the parties, a contract When instrument may be or other instrument in writing does not truly rectified. express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake

in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may, in its discretion, rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(a) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C, and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b.) By a marriage-settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators, and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent, and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing, the Court must
Presumption as to intent of parties. be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

33. In rectifying a written instrument, the Court may inquire what
Principles of rectification. the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

34. A contract in writing may be first rectified, and then, if the plaintiff
Specific enforcement of rectified contract. iff has so prayed in his plaint, and the Court thinks fit, specifically enforced.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution, it had expressed the intention of the parties.

CHAPTER IV.—OF THE RESCISSION OF CONTRACTS.

35.* Any person interested in a contract in writing may sue to have
When rescission may be adjudged. it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely:—

- (a) where the contract is voidable or terminable by the plaintiff;
- (b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;
- (c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums, which the Court has ordered him to pay.

* In ss 35 and 36 the words, "in writing," have been repealed by Act IV. of 1882 (Transfer of Property) in territories in which this Act is in force.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations

to *a.*—A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to *b.*—A, an attorney, induces his client B, a Hindú widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

36.* Rescission of a contract in writing cannot be adjudged for mere mistake unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.—OF THE CANCELLATION OF INSTRUMENTS.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it, and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(*a.*) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an under writer, to insure her. B may obtain the cancellation of the policy.

(*b.*) A conveys land to B, who bequeaths it to C, and dies. Thereupon D gets possession of the land, and produces a forged instrument, stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

* In ss. 35 and 36 the words, "in writing," have been repealed by Act IV. of 1882 (Transfer of Property) in territories in which this Act is in force.

(c.) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act. B may obtain the cancellation of this lease.

(d.) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

40. Where an instrument is evidence of different rights or different

obligations, the Court may, in a proper case, cancel it in part, and allow it to stand for the residue.

What instruments may be partially cancelled.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

41. On adjudging the cancellation of an instrument, the Court may

require the party to whom such relief is granted to make any compensation to the other which justice may require.

Power to require party for whom instrument is cancelled to make compensation

CHAPTER VI.—OF DECLARATORY DECREES.

42. Any person entitled to any legal character, or to any right as to

Discretion of Court as to any property, may institute a suit against any declarations of status or right. person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief.

Provided that no Court shall make any such declaration where the

plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Bar to such declaration.

Explanation.—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(a.) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(b.) A bequeaths his property to B, C, and D, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.' No such children are in existence. In a suit against A's executor, the Court may declare whether B, C, and D, took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(c.) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d.) A alienates to B property in which A has merely a life-interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may, in a suit by C against A and B, declare that C is so entitled.

(e.) The widow of a sonless Hindú alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation, was made without legal necessity, and was therefore void beyond the widow's lifetime.

(f.) A Hindú widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g.) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h.) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C, and obtain therein a declaration that they are truly the wife and children of B.

43. A declaration made under this chapter is binding only on the parties

Effect of declaration. to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindú, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized, and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.—OF THE APPOINTMENT OF RECEIVERS.

Appointment of receivers discretionary.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

The mode and effect of his appointment, and his rights, power, duties,

Reference to Code of Civil Procedure. and liabilities, are regulated by the Code of Civil Procedure.

CHAPTER VIII.—OF THE ENFORCEMENT OF PUBLIC DUTIES.

45. Any of the High Courts of Judicature at Fort William, Madras,

Power to order public servants and others to do certain specific acts.

and Bombay, may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature: provided—

(a) that an application for such order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act;

(b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice;

(d) that the applicant has no other specific and adequate legal remedy ; and

(e) that the remedy given by the order applied for will be complete.

Exemptions from such power. Nothing in this section shall be deemed to authorize any High Court—

(f) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant Governor of Bengal ;

(g) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown ; or

(h) to make any order which is otherwise expressly excluded by any law for the time being in force.

46. Every application under section 45 must be founded on an

Application how made.

affidavit of the person injured, stating his right in the matter in question, his demand of justice, and the denial thereof ; and the High Court may, in its discretion, make the order applied for absolute in the first instance or refuse it, or grant a rule to show cause why the order

Procedure therein.

applied for should not be made.

If, in the last case, the person, Court, or corporation complained of, shows

Order in alternative.

no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary, and make an answer thereto by such day as the High Court fixes in this behalf.

47. If the person, Court or corporation, to whom or to which such

Peremptory order

order is directed, makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

48. Every order under this chapter shall be executed, and may be ap-

Execution of, and appeal from, orders.

pealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

49. The costs of all applications and orders under this chapter shall be

Costs.

in the discretion of the High Court.

Bar to issue of *mandamus*.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

51. Each of the said High Courts shall, as soon as conveniently may be,

Power to frame rules.

frame rules to regulate the procedure under this chapter ; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

PART III.—OF PREVENTIVE RELIEF.

CHAPTER IX.—OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.—OF PERPETUAL INJUNCTIONS.

54. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II. of this Act.

When the defendant invades or threatens to invade the plaintiffs right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation.—For the purpose of this section a trademark is property.

Illustrations.

(a.) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b.) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c.) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d.) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e.) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f.) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g.) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(h.) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(i.) A is B's medical adviser. He demands money of B, which B declines to pay. A then threatens to make known the effect of B's communications to him as patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(j.) A, the owner of two adjoining houses, lets one to B, and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(k.) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto, and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(l.) A, B, and C, are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(m.) A, a Hindú widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(n.) A, B, and C, are members of an undivided Hindú family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house, and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(o.) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee, and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p.) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villages sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q.) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r.) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine, and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s.) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t.) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u.) A infringes B's patent. If the Court is satisfied that the patent is valid, and has been infringed, B may obtain an injunction to restrain the infringement.

(v.) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w.) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(x.) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y.) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(z.) A carries on a manufactory, and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival-manufacturer. A may sue for an injunction to restrain B from disclosing the process.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may, in its discretion, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(a) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b.) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c.) In the case put as illustration *i* to section 54, the Court may also order all written communications made by B as patient to A, as medical adviser, to be destroyed.

(d.) In the case put as illustration *y* to section 54, the Court may also order A's letters to be destroyed.

(e.) A threatens to publish statements concerning B which would be punishable under Chapter XXI. of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f.) A, being B's medical adviser, threatens to publish B's written communications with him showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g.) In the cases put as illustrations *v* and *w* to section 54, and as illustrations *e* and *f* to this section, the Court may also order the copies produced by piracy, and the trademarks, statements, and communication, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

56. An injunction cannot be granted—

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(c) to restrain persons from applying to any legislative body;

(d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government;

(e) to stay proceedings in any criminal matter;

(f) to prevent the breach of a contract the performance of which would not be specifically enforced;

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(h) to prevent a continuing breach in which the applicant has acquiesced;

(i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;

(j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(k) where the applicant has no personal interest in the matter.

Illustrations.

(a.) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm, and refused B access to them. The Court will refuse the injunction.

(b.) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c.) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article, to which he gives a name and description such as to lead people into the belief that they are buying B's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one, and he cannot obtain an injunction.

57. Notwithstanding section 56, clause *f*, where a contract comprises an

Injunctions to perform affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(a.) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b.) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c.) A contracts with B to sing for twelve months at B's theatre, and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d.) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival-house as clerk.

(e.) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE—(*see section 2*).

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
VIII. of 1859 ...	Civil Procedure	Sections 15 and 192.
XIV. of 1859 ...	Limitation	Section 15.
XXIII. of 1861 ...	Civil Procedure	Section 26.
IX. of 1872 ...	Contract	In section 28, the second clause of exception 1.

THE INDIAN REGISTRATION ACT, NO. III. OF 1877.

RECEIVED THE G.-G.'s ASSENT ON THE 14TH FEBRUARY 1877.

An Act for the Registration of Documents.

WHEREAS it is expedient to amend the law relating to the registration of documents ; It is hereby enacted as follows :—

PART I.—PRELIMINARY.

Short title.

1. This Act may be called "The Indian Registration Act, 1877."

Local extent.

It extends to the whole of British India, except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor-General in Council, exclude from its operation.

Commencement.

And it shall come into force on the first day of April 1877.

Repeal of enactments.

2. On and from that day Act No. VIII. of 1871 shall be repealed.

But all appointments, notifications, rules, and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared, under such Act or any of the enactments thereby repealed, shall be deemed to have been respectively made, formed, established, and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

Reference made in Acts passed before the first day of April 1877 to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Lease" includes a counterpart, kabūliyat, an undertaking to cultivate or occupy, and an agreement to lease :

"Signature" and "signed" include and apply to the affixing of a mark :

"Immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass :

"Moveable property" includes standing timber, growing crops, and grass, fruit upon and juice in trees, and property of every other description, except immoveable property :

"Book" includes a portion of a book, and also any number of sheets connected together with a view of forming a book or portion of a book :

"Endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act :

"Minor" means a person who, according to the personal law to which he is subject, has not attained majority :

"Representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot :

"Addition" means the place of residence, and the profession, trade, rank, and title (if any) of a person described, and in the case of a native, his caste (if any) and his father's name, or, where he is usually described as the son of his mother, then his mother's name :

"District Court" includes the High Court in its ordinary original civil jurisdiction ; and

"District" and "sub-district" respectively mean a district and sub-district formed under this Act.

PART II.—OF THE REGISTRATION-ESTABLISHMENT.

4. The Local Government shall appoint an officer to be the Inspector-General of Registration for the territories subject to such Government,

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

The Governor of Bombay in Council may also, with the previous consent of the Branch Inspector-General of the Governor-General in Council, appoint an officer to be Branch Inspector-General of Sindh, who shall have all the powers of an Inspector-General under this Act other than the power to frame rules hereinafter conferred.

Any Inspector-General or the Branch Inspector-General of Sindh may hold simultaneously any other office under Government.

5. For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts.

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. The Local Government may appoint such persons, whether public Registrars and sub-registrars, or not, as it thinks proper, to be registrars of the several districts, and to be sub-registrars of the several sub-districts, formed as aforesaid, respectively.

7. The Local Government shall establish in every district an office to be styled the office of the registrar, and in every sub-district an office or offices to be styled the office of the sub-registrar, or the offices of the joint sub-registrars, and may amalgamate with any office of a registrar any office of a sub-registrar subordinate to such registrar.

and may authorize any sub-registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the registrar to whom he is subordinate :

Provided that no such authorization shall enable a sub-registrar to hear an appeal against an order passed by himself under this Act.

8. The Local Government may also appoint officers to be called inspectors of registration-offices, and may from time to time prescribe the duties of such officers. Every such inspector shall be subordinate to the Inspector-General.

9. Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the sub-registrar or the registrar of such sub-district or district, as the case may be.

Whenever the Governor-General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be registrar of the district and Inspector-General, and, in the case of a district, what authority shall be Inspector-General with reference to such cantonment and the sub-registrar or registrar thereof.

10. Whenever any registrar other than the registrar of a district, including a presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the registrar's office is situate,

shall be the registrar during such absence, or until the Local Government fills up the vacancy.

Whenever the registrar of a district, including a presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector-General appoints in this behalf shall be the registrar during such absence, or until the Local Government fills up the vacancy.

11. Whenever any registrar is absent from his office on duty in his district, he may appoint any sub-registrar or other person in his district to perform, during such absence, all the duties of a registrar, except those mentioned in sections 68 and 72.

12. Whenever any sub-registrar is absent, or when his office is temporarily vacant, any person whom the registrar of the district appoints in this behalf shall be sub-registrar during such absence, or until the Local Government fills up the vacancy.

13. All appointments made under section 10, section 11, or section 12, shall be reported to the Local Government by the Inspector-General. Such report shall be either special or general as the Local Government directs.

The Local Government may suspend, remove, or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

14. Subject to the approval of the Governor-General in Council, the Local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

The Local Government may allow proper establishments for the several offices under this Act.

15. The several registrars and sub-registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs :—
 The seal of the registrar (or of the sub-registrar) of

16. The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

The Local Government shall supply the office of every registrar with a fire-proof box, and shall, in each district, make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III.—OF REGISTRABLE DOCUMENTS.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI. of 1864, or Act No. XX. of 1866, or Act No. VIII. of 1871, or this Act, came or comes into force (that is to say),—

(a) instruments of gift of immoveable property :

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property :

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest. and

(d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent :

Provided that the Local Government may, by order published in the official gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees.

Exception of
composition-deeds ;

and of transfers of shares
and debentures in land com-
panies ;

Nothing in clauses b and c of this section
applies to

(e) any composition-deed ;

(f) any instrument relating to shares in a
joint-stock company, notwithstanding that the
assets of such company consist in whole or in part
of immoveable property, or

(g) any endorsement upon or transfer of any debenture issued by any
such company ;

(h) any document not itself creating, declaring, assigning, limiting, or extinguished any right, title, or interest of the documents merely creating right to obtain other documents. value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit, or extinguish any such right, title, or interest;

(i) decrees and orders of Courts and awards;

(j) grants of immoveable property by Government;

(k) instruments of partition made by revenue-officers;

(l) certificates and instruments of collateral security granted under the Land Improvement Act, 1871.

Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a will, shall also be registered.

Documents of which registration is optional.

18. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest;

(c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17;

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit, or extinguish any right, title, or interest to or in moveable property;

(e) wills;

(f) all other documents not required by section 17 to be registered.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district, and also by a true copy.

20. The registering officer may, in his discretion, refuse to accept for registration any document in which any interlineation, blank, erasure, or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure, or alteration. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure, or alteration.

21. (a.) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

Description of parcels.

(b.) Houses in town shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers, if the houses in such street or road are numbered. Other houses and lands shall be described by

their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(c.) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

22. Failure to comply with the provisions contained in section 21, clause 6, shall not disentitle a document to be registered if the description of the property to which it relates in sufficient to identify such property.

Failure to comply with rules as to description of houses and land.

PART IV.—OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25, 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution,

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final :

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

24. If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India, is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a sub-registrar, who shall forthwith forward it to the registrar to whom he is subordinate.

25. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied,

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

26. Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Provision where office is closed on last day of period for presentation.

Wills may be presented or deposited at any time.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

PART V.—OF THE PLACE OF REGISTRATION.

28. Save as in this part otherwise provided, every document mentioned in section 17, clauses *a*, *b*, *c*, and *d*, and section 18, clauses *a*, *b*, and *c*, shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

29. Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented for registration either in the office of the sub-registrar in whose sub-district the document was executed, or in the office of any other sub-registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the sub-registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other sub-registrar under the Local Government at which all the persons claiming under the decree or order, desire the copy to be registered.

30. (a.) Any registrar may, in his discretion, receive and register any document which might be registered by any sub-registrar subordinate to him.

(b.) The registrar of a district including a presidency-town and the registrar of the Lahore district may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit.

But such officer may, on special cause being shown, attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

PART VI.—OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,

by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or by the representative or assign of such person, or by the agent of such person, representative, or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Powers-of-attorney recognizable for purposes of section 32.

33. For the purposes of section 32, the powers-of-attorney next hereinafter mentioned shall alone be recognized (that is to say),—

(a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the registrar or sub-registrar within whose district or sub-district the principal resides :

(b) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate :

(c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul, or Vice-Consul, or representative of Her Majesty or of the Government of India :

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses a and b of this section :—

persons who, by reason of bodily infirmity, are unable, without risk of serious inconvenience, so to attend ;

persons who are in jail under civil or criminal process ; and
persons exempt by law from personal appearance in Court.

In every such case the registrar or sub-registrar or Magistrate (as the case may be), if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

To obtain evidence as to the voluntary nature of the execution, the registrar or sub-registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports, on the face of it, to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

34. Subject to the provisions contained in this part and in sections 41,

Inquiry before registration 43, 45, 69, 75, 77, 88, and 89, no document shall by registering officer. be registered under this Act, unless the persons executing such document, or their representatives, assigns, or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25, and 26 :

Provided that if, owing to urgent necessity or unavoidable accident, all such persons do not so appear, the registrar, in cases where the delay in appearing does not exceed four months, may direct that, on payment of a fine, not exceeding ten times the amount of the proper registration-fee, in addition to the fine, if any, payable under section 24, the document may be registered.

Such appearance may be simultaneous or at different times.

The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed.

(b) satisfy himself as to the identity of the persons appearing before him, and alleging that they have executed the document, and

(c) in the case of any person appearing as a representative, assign, or agent, satisfy himself of the right of such person so to appear.

Any application for a direction under the proviso in this section may be lodged with a sub-registrar, who shall forthwith forward it to the registrar to whom he is subordinate.

Nothing in this section applies to copies of decrees or orders.

35. If all the persons executing the document appear personally before

the registering officer, and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document ;

or, in the case of any person appearing by a representative, assign, or agent, if such representative, assign, or agent admits the execution;

or, if the person executing the document is dead, and his representative or assign appears before the registering officer, and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive.

The registering officer may, in order to satisfy himself that the persons

appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office. If any of the persons by whom the document purports to be executed deny its execution, or

if any such person appears to the registering officer* to be a minor, an idiot, or a lunatic, or

if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing, or dead † Provided that, where such officer is a registrar, he shall follow the procedure prescribed in Part XII. of this Act.

PART VII.—OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. If any person presenting any document for registration, or claiming

under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government from time to time directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein

37. The officer or Court, upon receipt of the peon's fee payable in such

cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

38. A person who, by reason of bodily infirmity, is unable, without risk

or serious inconvenience, to appear at the registration-office,

* The words, "to the registering office," have been added by Act XII of 1879, s. 104.

† The words, "as to the person so denying, appearing, or dead," have been added by the same Act and section.

a person in jail under civil or criminal process, and persons exempt by law from personal appearance in Court, and who would, but for the provision next hereinafter contained, be required to appear in person at the registration-office, shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

59. The law in force for the time being as to summonses, commissions, and compelling the attendance of witnesses, and Law as to summonses, commissions, and witnesses. for their remuneration in suits before Civil Courts shall, save as aforesaid, and *mutatis mutandis*, apply to any summons of commission issued, and any person summoned to appear under the provisions of this Act.

PART VIII.—OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. The testator, or after his death any person claiming as executor or Persons entitled to present wills and authorities to adopt. otherwise under a will, may present it to any registrar or sub-registrar for registration, and the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any registrar or sub-registrar for registration.

41. A will or an authority to adopt, presented for registration by the Registration of wills and testator or donor, may be registered in the same authorities to adopt. manner as any other document.

A will or authority to adopt, presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied—

(a) that the will or authority was executed by the testator or donor, as the case may be ;

(b) that the testator or donor is dead ; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX.—OF THE DEPOSIT OF WILLS.

42. Any testator may, either personally or by duly authorized agent, Deposit of wills. deposit with any registrar his will in a sealed cover, superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

43. On receiving such cover, the registrar, if satisfied that the person Procedure on deposit of wills. presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day, and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

The registrar shall then place and retain the sealed cover in his fire-proof box.

44. If the testator who has deposited such cover wishes to withdraw it, Withdrawal of sealed cover he may apply either personally or by duly authorized agent to the registrar who holds it in deposit, deposited under section 42. and such registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45. If, on the death of a testator who has deposited a sealed cover Proceedings on death of under section 42, application be made to the depositor. registrar who holds it in deposit to open the same, and if the registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

Re-deposit.

When such copy has been made, the registrar shall re-deposit the original will.

46. Nothing hereinbefore contained shall affect the provisions of the Saving of Act X. of 1865, Indian Succession Act, section 259, or the power of any Court by order to compel the production of any will. But whenever any such order is made, the registrar shall, unless the will has been already copied under section 45, open the cover, and cause the will to be copied into his Book No. 3, and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X.—OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the time from which it Time from which registered document operates. would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. All non-testamentary documents duly registered under this Act, Registered documents relating to property when to take effect against oral agreements. and relating to any property, whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Effect of non-registration of documents required to be registered.

49. No document required by section 17 to be registered

shall affect any immoveable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered in accordance with the provisions of this Act.

50. Every document of the kinds mentioned in clauses *a*, *b*, *c*, and *d* of section 17, and clauses *a* and *b* of section 18 shall, Registered documents relating to land, of which registration is optional, to take effect against unregistered documents. if duly registered, take effect, as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses *e*, *f*, *g*, *h*, *i*, *j*, *k*, and *l* of the same section.

Explanation.—In cases where Act No. XVI. of 1864 or Act No. XX. of 1866 was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and where the document is executed after the first day of July 1871, not registered under Act No. VIII. of 1871 or this Act.

PART XI.—OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A.) *As to the Register-books and Indexes.*

Register-books to be kept in the several offices.

51. The following books shall be kept in the several offices hereinafter named (that is to say)—

In all registration offices—

Book 1, "Register of non-testamentary documents relating to immoveable property;"

Book 2, "Record of reasons for refusal to register;"

Book 3, "Register of wills and authorities to adopt;" and

Book 4, "Miscellaneous register."

In the offices of registrars—

Book 5, "Register of deposits of wills."

In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18, and 89,* which relate to immoveable property, and are not wills.

In Book 4 shall be entered all documents registered under clauses *d* and *f* of section 18, which do not relate to immoveable property.

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of the registrar has been amalgamated with the office of a sub-registrar.

52. The day, hour, and place of presentation, and the signature of every

Endorsements on documents presented.

person presenting a document for registration, shall be endorsed on every such document at the time

of presenting it: a receipt for such document shall be given by the registering officer to the person presenting the same; and,

Receipt for document.

every document admitted to registration shall, without unnecessary delay,

Documents admitted to registration to be copied

be copied in the book appropriated therefor according to the order of its admission.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

53. All entries in each book shall be numbered in a consecutive series,

Entries to be numbered consecutively

which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54. In every office in which any of the books hereinbefore mentioned

Current indexes and entries therein.

are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

* The figures 89 have been substituted for 87 by Act XII. of 1879, s. 105.

55. Four such indexes shall be made in all registration-offices, and shall

Indexes to be made by be named, respectively, Index No. I., Index No. II.,
registering officers Index No. III., and Index No. IV.

Index No. I. shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

Index No. II. shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

Index No. III. shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and, after the death of the testator or the donor (but not before), the names and additions of all persons claiming under the same.

Index No. IV. shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

Indexes Nos. I, II, III, and IV., shall contain such other particulars, Extra particulars in indexes and shall be prepared in such form, as the Inspector-General from time to time directs.

56 Every sub-registrar shall send to the registrar to whom he is subordinate, at such intervals as the Inspector-General from time to time directs, a copy of all entries made by such sub-registrar, during the last of such intervals, in Indexes Nos. I, II, and III.

Copy of entries in Indexes Nos. I, II, and III to be sent by sub-registrar to registrar.

Such copy to be filed by registrar.

Every registrar receiving such copy shall file it in his office.

57. Subject to the previous payment of the fees payable in that behalf,

Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries

the Books Nos. 1 and 2, and the indexes relating to Book No. 1, shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

Subject to the same provisions, copies of entries in Book No. 3, and in the index relating thereto, shall be given to the persons executing the documents to which such entries relate, or to their agents, and, after the death of the executants (but not before), to any person applying for such copies.

Subject to the same provisions, copies of entries in Book No. 4, and in the index relating thereto, shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative. The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B.) *As to the Procedure on admitting to Registration.*

58. On every document admitted to registration, other than a copy of a

Particulars to be endorsed on documents admitted to registration

decree or order, or a copy of a certificate under the Land Improvement Act, 1871, sent by the Collector to be registered, there shall be endorsed from time to time the following particulars (that is to say),—

(a) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign, or agent of any person, the signature and addition of such representative, assign, or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence, in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall, at the same time, endorse a note of such refusal.

59. The registering officer shall affix the date and his signature to all en-

Such endorsements to be dated and signed by registering officer.

dorsements made under sections 52 and 58, relating to the same document, and made in his presence on the same day.

60. After such of the provisions of sections 34, 35, 58, and 59 as apply

Certificate showing that document has been registered, and number and page of book in which it has been copied.

to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

Such certificate shall be signed, sealed, and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. The endorsements and certificate referred to and mentioned in sec-

Endorsements and certificate to be copied.

tions 59 and 60 shall thereupon be copied into the margin of the register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

The registration of the document shall thereupon be deemed complete,

Document to be returned.

and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. When a document is presented for registration under section 19, the

Procedure on presenting documents in language unknown to registering officer.

translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration-office.

The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and for the purpose of making the copies and memoranda required by sections 57, 64, 65, and 66, the translation shall be treated as if it were the original.

63. Every registering officer may, at his discretion, administer an oath

Power to administer oaths.

to any person examined by him under the provisions of this Act.

He may also, at his discretion, record a note of the substance of the

Record of substance of statements,

statement made by each such person, and such statement shall be read over, or (if made in a

language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C.) Special Duties of Sub-Registrar.

64. Every sub-registrar, on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district, shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other sub-registrar subordinate to the same registrar as himself in whose sub-district any part of such property is situate, and such sub-registrar shall file the memorandum in his Book No. 1.

65. Every sub-registrar, on registering a non-testamentary document relating to immoveable property situate in more districts than one, shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

The registrar, on receiving the same, shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the sub-registrars subordinate to him within whose sub-district any part of such property is situate; and every sub-registrar receiving such memorandum shall file it in his Book No. 1.

(D.) Special Duties of Registrar.

66. On registering any non-testamentary document relating to immoveable property, the registrar shall forward a memorandum of such document to each sub-registrar subordinate to himself in whose sub-district any part of the property is situate.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other registrar in whose district any part of such property is situate.

Such registrar, on receiving any such copy, shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the sub-registrars subordinate to him within whose sub-district any part of the property is situate.

Every sub-registrar receiving any memorandum under this section shall file it in his Book No. 1.

67. On any document being registered under section 30, clause b, a copy of such document and of the endorsements and certificate thereon shall be forwarded to every registrar within whose district any part of the property to which the instrument relates is situate, and the registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section 66.

(E.) Of the Controlling Powers of Registrars and Inspectors-General.

68. Every sub-registrar shall perform the duties of his office under the Registrar to superintend superintendence and control of the registrar in and control sub-registrars. whose district the office of such sub-registrar is situate.

Every registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any sub-registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

69 The Inspector-General shall exercise a general superintendence over all the registration-offices in the territories under Inspector-General to superintend registration-offices. the Local Government, and shall have power from His power to make rules. time to time to make rules consistent with this Act—

providing for the safe custody of books, papers, and documents, and also for the destruction of such books, papers, and documents as need no longer be kept ;

declaring what languages shall be deemed to be commonly used in each district ;

declaring what territorial division shall be recognized under section 21 ;

regulating the amount of fines imposed under sections 24 and 34, respectively ;

regulating the exercise of the discretion reposed in the registering officer by section 63 ;

regulating the form in which registering officers are to make memoranda of documents ;

regulating the authentication by registrars and sub-registrars of the books kept in their respective offices under section 51 ;

declaring the particulars to be contained in Indexes Nos. I., II., III., and IV., respectively ;

declaring the holidays that shall be observed in the registration-offices ; and, generally, regulating the proceedings of the registrars and sub-registrars.

The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official gazette, and shall then have the same force as if they were inserted in this Act.

70. The Inspector-General may also, in the exercise of his discretion, remit wholly or in part the difference between any His power to remit fines. fine levied under section 24 or section 34, and the amount of the proper registration-fee.

PART XII.—OF REFUSAL TO REGISTER.

Reasons for refusal to register to be recorded. 71. Every sub-registrar refusing to register a document,

except on the ground that the property to which it relates is not situate within his sub-district,

shall make an order of refusal, and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document ; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed, unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. Except where the refusal is made on the ground of denial of execu-

Power to reverse or alter orders of sub-registrar refusing registration on ground other than denial of execution.

tion, an appeal shall lie against an order of a sub-registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the registrar to whom such sub-registrar is subordinate, if presented to such registrar within thirty days from the date of the order; and the registrar may reverse or alter such order;

and if the order of the registrar directs the document to be registered, and the document is duly presented for registration within thirty days after the making of such order, the sub-registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Application where sub-registrar refuses to register on ground of denial of execution.

73. When a sub-registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution,

any person claiming under such document, or his representative, assign, or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the registrar to whom such sub-registrar is subordinate in order to establish his right to have the document registered.

Such application shall be in writing, and shall be accompanied by copy of the reasons recorded under section 71; and the statements in the application shall be verified by the applicant in manner required by law for the verification of complaints.

74. In such case, and also where such denial as aforesaid is made before

Procedure of registrar on such application.

a registrar in respect of a document presented for registration to him, he shall, as soon as conveniently may be, enquire—

(a) whether the document has been executed;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. If the registrar finds that the document has been executed, and that

Order to register, and procedure thereon.

the said requirements have been complied with, he shall order the document to be registered.

And if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

The registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

Refusal by registrar.

76. Every registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district, or that the document ought to be registered in the office of a sub-registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal, and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No appeal lies from any order under this section or section 72.

77. Where the registrar refuses to order the document to be registered

Suit in case of refusal. under section 72 or section 76, any person claiming under such document, or his representative, assign, or agent, may within thirty days after the making of the order of refusal, institute in the Civil Court within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office, if it be duly presented for registration within thirty days after the passing of such decree; and the provisions contained in the second and third paragraphs of section 75 shall, *mutatis mutandis*, apply to all documents so presented, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

PART XIII.—OF THE FEES FOR REGISTRATION, SEARCHES, AND COPIES.

78. Subject to the approval of the Governor-General in Council, the

Fees to be fixed by Local Government. Local Government shall prepare a table of fees payable—

for the registration of documents :

for searching the registers :

for making or granting copies of reasons, entries, or documents, before, on, or after registration :

And of extra or additional fees payable—

for every registration under section 30 :

for the issue of commissions :

for filing translations :

for attending at private residences :

for the safe custody and return of documents :

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

Alteration of fees.

The Local Government may from time to time, subject to the like approval, alter such table.

79. A table of the fees so payable shall be published in the official

Publication of fees.

gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration-office.

80. All fees for the registration of documents under this Act shall

Fees payable on presentation.

be payable on the presentation of such documents.

PART XIV.—OF PENALTIES.

81. Every registering officer appointed under this Act, and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating, or registering of any document presented or deposited under its provisions, endorses, copies, translates, or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

82. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both :

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act ;

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan ;

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act ;

(d) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

83. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the registrar, or the sub-registrar, in whose territories, district, or sub-district, as the case may be, the offence has been committed.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate* of the second class :

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the presidency-towns, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the police of such towns for the time being in force.

84. Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words "judicial proceeding" shall include any proceeding under this Act.

* The words, "Magistrates of the second class," have been substituted for the words, "Subordinate Magistrate of the first class," by Act XII. of 1879, s. 106.

A registrar shall, but a sub-registrar shall not, as such, be deemed a Court within the meaning of sections 435 and 436 of the Code of Criminal Procedure.

PART XV.—MISCELLANEOUS.

85. Documents (other than wills) remaining unclaimed in any registration-office, for a period exceeding two years, may be destroyed.

Registering officer not liable for thing *bona fide* done or refused in his official capacity.

86. No registering officer shall be liable to any suit, claim, or demand by reason of anything in good faith done or refused in his official capacity.

87. Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Nothing so done invalidated by defect in appointment or procedure.

88. Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator-General of Bengal, Madras, or Bombay, or for any Official Trustee or Official Assignee, or for the Sheriff, Receiver, or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

Registration of documents executed by Government officers or certain public functionaries.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary to Government or to such officer of Government, Administrator-General, Official Trustee, Official Assignee, Sheriff, Receiver, or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. Every officer granting a certificate under the Land Improvement Certificates under Land Act, 1871, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted, as collateral security, is situate, and such registering officer shall file the copy* in his Book No. 1.

Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.†

Exemptions from Act.

90. Nothing contained in this Act, or in Act No. VIII. of 1871, or in any Act thereby repealed, shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps:—

Exemption of certain documents executed by or in favour of Government.

(a.) Documents issued, received, or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement.

* The word "copy" has been substituted for the word "certificate" by Act XII. of 1879, s. 107.

† This clause has been added by Act XII. of 1879, s. 107.

(b.) Documents and maps issued, received, or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey.

(c.) Document which, under any law for the time being in force, or filed periodically in any revenue-office by patwáris or other officers charged with the preparation of village-records.

(d.) Sanads, inám title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land.

But all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section 90, clauses *a*, *b*, and *c*, and all registers of the documents mentioned in clause *d*, shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

92. All rules relating to registration heretofore enforced in British Burma shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

THE INDIAN LIMITATION ACT, NO. XV. OF 1877.

RECEIVED THE G.-G.'s ASSENT ON THE 19TH JULY 1877.

An Act for the Limitation of Suits, and for other Purposes.

WHEREAS it is expedient to amend the law relating to the limitation of suits, appeals, and certain applications to Courts;
Preamble. And whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title. 1 This Act may be called "The Indian Limitation Act, 1877."

It extends to the whole of British India, but nothing contained in sections two and three or in Parts II. and III.
Extent of Act applies—

- (a) to suits under the Indian Divorce Act, or
- (b) to suits under Madras Regulation VI. of 1831.

Commencement. And it shall come into force on the first day of October 1877.

2. On and from that day the Acts mentioned in the first schedule thereto annexed shall be repealed to the extent therein specified.
Repeal of Acts.

But all references to the Indian Limitation Act, 1871, shall be read as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act, or under any enactment thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25.
References to Act IX. of 1871.

Saving of titles already acquired.

Saving of Act IX. of 1872, s. 25.

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second schedule hereto annexed may be brought within five years next after the said first day of October 1877, unless where the period prescribed for such suit by the said Indian Limitation Act, 1871, shall have expired before the completion of the said five years, and any other suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context.

'plaintiff' includes also any person from or through whom a plaintiff derives his right to sue; 'applicant' includes also any person from or through whom an applicant derives his right to apply; and 'defendant' includes also any person from or through whom a defendant derives his liability to be sued:

'easement' includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or any thing growing in, or attached to, or subsisting upon, the land of another:

'bill of exchange' includes also a hundi and a cheque:

'bond' includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

'promissory note' means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

'trustee' does not include a benámídar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title:

'suit' does not include an appeal or an application:

'registered' means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context:

'foreign country' means any country other than British India:

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

4. Subject to the provisions contained in sections five to twenty-five

Dismissal of suits, &c., (inclusive), every suit instituted, appeal presented, instituted, &c., after period and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence, and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

5. If the period of limitation prescribed for any suit, appeal, or applica-

Proviso where Court is closed when period expires. tion, expires on a day when the Court is closed, the suit, appeal, or application, may be instituted, presented, or made on the day that the Court re-opens.

* The definition of "easements" is repealed by the Indian Easements Act (V. of 1882) in the territories to which that Act extends.

Any appeal or application for a review of judgment may be admitted
 Proviso as to appeals and after the period of limitation prescribed therefor,
 applications for review. when the appellant or applicant satisfies the Court
 that he had sufficient cause for not presenting the appeal or making the ap-
 plication within such period.

6. When, by any special or local law now or hereafter in force in
 Special and local laws of British India, a period of limitation is specially
 limitation. prescribed for any suit, appeal, or application,
 nothing herein contained shall affect or alter the period so prescribed.

7. If a person entitled to institute a suit or make an application be, at
 Legal disability. the time from which the period of limitation is to
 be reckoned, a minor, or insane, or an idiot, he may
 institute the suit or make the application within the same period after the
 disability has ceased, as would otherwise have been allowed from the time
 prescribed therefor in the third column of the second schedule hereto annexed.

When he is, at the time from which the period of limitation is to be
 Double and successive dis- reckoned, affected by two such disabilities, or when,
 abilities. before his disability has ceased, he is affected by
 another disability, he may institute the suit or make the application within
 the same period after both disabilities have ceased as would otherwise have
 been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative
 may institute the suit or make the application within the same period after
 the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any
 Disability of representative. such disability, the rules contained in the first two
 paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption,
 or shall be deemed to extend, for more than three years from the cessation
 of the disability or the death of the person affected thereby, the period within
 which any suit must be instituted or application made.

Illustrations.

(a.) The right to sue for the hire of a boat accrues to A during his minority.
 He attains majority four years after such accrues. He may institute his suit at any
 time within three years from the date of his attaining majority.

(b.) A, to whom a right to sue for a legacy has accrued during his minority,
 attains majority eleven years after such accrues. A has under the ordinary law,
 only one year remaining within which to sue. But under this section and extension
 of two years will be allowed him, making in all a period of three years from the
 date of his attaining majority within which he may bring his suit.

(c.) A right to sue accrues to Z during his minority. After the accrues, but
 while Z is still a minor, he becomes insane. Time runs against Z from the date
 when his insanity and minority cease.

(d.) A right to sue accrues to X during his minority. X dies before attaining
 majority, and is succeeded by Y, his minor son. Time runs against Y from the date
 of his attaining majority.

(e.) A right to sue for an hereditary office accrues to A, who at the time is
 insane. Six years after the accrues A recovers his reason. A has six years, under
 the ordinary law, from the date when his insanity ceased within which to institute
 a suit. No extension of time will be given him under this section.

(f.) A right to sue as landlord to recover possession from a tenant accrues to
 A who is an idiot. A dies three years after the accrues, his idiocy continuing up to
 the date of his death. A's representative in interest has, under the ordinary law,
 nine years from the date of A's death within which to bring a suit. This section
 does not extend that time, except where the representative is himself under disabili-
 ty when the representation devolves upon him.

8. When one of several joint creditors or claimants is under any such disability and when a discharge can be given without the concurrence of such person, time will run against them all; but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Illustrations.

(a.) A incurs a debt to a firm, of which B, C, and D, are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C, and D.

(b.) A incurs a debt to a firm, of which E, F, and G, are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

9. When once time has begun to run, no subsequent disability or inability to sue stops it :
Continuous running of time.

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property, shall be barred by any length of time.
Suits against express trustees and their representatives.

11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.
Suits on foreign contracts.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.
Foreign limitation law.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12. In computing the period of limitation prescribed for any suit, appeal, or application, the day from which such period is to be reckoned shall be excluded.
Exclusion of day on which right to sue accrues.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence, or order appealed against or sought to be reviewed, shall be excluded.
Exclusion in case of appeals and certain applications.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. In computing the period of limitation prescribed for any suit, the

Exclusion of time of defendant's absence from British India. time during which the defendant has been absent from British India shall be excluded.

14. In computing the period of limitation prescribed for any suit, the

Exclusion of time of proceeding *bona fide* in Court without jurisdiction. time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

In computing the period of limitation prescribed for a suit, proceedings

Like exclusion in case of order under Civil Procedure Code, s. 20. in which have been stayed by order under the Code of Civil Procedure, section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

In computing the period of limitation prescribed for any application,

Like exclusion in case of application. the time during which the applicant has been making another application for the same relief shall be excluded, where the last-mentioned application is made in good faith to a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Explanation 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

15. In computing the period of limitation prescribed for any suit, the

Exclusion of time during which commencement of suit is stayed by injunction or order. institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

16. In computing the period of limitation prescribed for a suit for

Exclusion of time during which judgment-debtor is attempting to set aside execution-sale. possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

17. When a person who would, if he were living, have a right to

Effect of death before right to sues accrues. institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18. When any person, having a right to institute a suit or make an application, has, by means of fraud, been kept from the knowledge of such right, or of the title on which it is founded,

Effect of fraud.

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application,

(a. against the person guilty of the fraud or accessory thereto, or

(b. against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance, or enjoyment, has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section “signed” means signed either personally or by an agent duly authorized in this behalf.

20. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the hand writing of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

Effect of receipt of produce of mortgaged land.

21. Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

One of several joint contractors, &c., not chargeable by reason of acknowledgment or payment made by another of them.

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Effect of substituting or adding new plaintiff or defendant.

Provided that, when a plaintiff dies, and the suit is continued by his
 Proviso where original legal representative, it shall, as regards him, be
 plaintiff dies. deemed to have been instituted when it was
 instituted by the deceased plaintiff.

Provided also that, when a defendant dies, and the suit is continued
 Proviso where original de- against his legal representative, it shall, as regards
 fendant dies. him, be deemed to have been instituted when it
 was instituted against the deceased defendant.

23. In the case of a continuing breach of contract, and in the case of
 Continuing breaches and a continuing wrong independent of contract, a
 wrongs. fresh period of limitation begins to run at every
 moment of the time during which the breach or the wrong, as the case may
 be, continues.

24. In the case of a suit for compensation for an act which does not
 Suit for compensation for give rise to a cause of action, unless some specific
 act not actionable without injury actually results therefrom, the period of
 special damage. limitation shall be computed from the time when
 the injury results.

Illustrations.

(a.) A owns the surface of a field. B owns the subsoil. B digs coal thereout
 without causing any immediate apparent injury to the surface, but at last the surface
 subsides. The period of limitation in the case of a suit by A against B runs from
 the time of the subsidence.

(b.) A speaks and publishes of B slanderous words not actionable in themselves
 without special damages caused thereby. C in consequence refuses to employ B as
 his clerk. The period of limitation in the case of a suit by B against A for com-
 pensation for the slander does not commence till the refusal

Computation of time men-
 tioned in instruments.

25. All instruments shall, for the purposes of
 this Act, be deemed to be made with reference to
 the Gregorian calendar.

Illustrations.

(a.) A Hindú makes a promissory note bearing a native date only, and payable
 four months after date. The period of limitation applicable to a suit on the note
 runs from the expiry of four months after date computed according to the Gre-
 gorian calendar.

(b.) A Hindú makes a bond, bearing a native date only, for the repayment of
 money within one year. The period of limitation applicable to a suit on the bond
 runs from the expiry of one year after date computed according to the Gregorian
 calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26.* Where the access and use of light or air to and for any building
 Acquisition of right to have been peaceably enjoyed therewith as an ease-
 easements. ment, and as of right, without interruption, and
 for twenty years,

and where any way or watercourse, or the use of any water, or any
 other easement (whether affirmative or negative), has been peaceably and
 openly enjoyed by any person claiming title thereto, as an easement, and as
 of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use
 of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period
 ending within two years next before the institution of the suit wherein the
 claim to which such period relates is contested.

* Sections 26 and 27 are repealed by Act V. of 1882 (Easements) in territories to which
 Act V. of 1882 extends. All references in any Act or Regulation to the said sections, or to
 ss. 27, and 28 of Act IX. of 1871, shall, in such territories, be read as made to ss. 15 and 16 of
 Act V. of 1882.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment, by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to, or acquiesced in, for one year after the claimant has notice thereof, and of the person making or authorizing the same to be made.

Illustrations.

(a.) A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1860 to 1st January 1880. The plaintiff is entitled to judgment.

(b.) In a like suit, also brought in 1881, the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

27.* Provided that, when any land or water upon, over, or from which any easement has been enjoyed or derived, has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that, during ten of these years, C, a Hindū widow, had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

THE FIRST SCHEDULE.

Number and year of Acts.	Title.	Extent of Repeal.
X. of 1865 ...	The Indian Succession Act.	In section 321 the words "within two years after the death of the testator, or one year after the legacy has been paid."
IX. of 1871 ...	The Indian Limitation Act 1871.	The whole.
X. of 1877 ...	The Code of Civil Procedure.	Section 599, and in section 601 the words "within thirty days from the date of the order."

* Sections 26 and 27 are repealed by Act V. of 1882 (Easements) in territories to which Act V. of 1882 extends. All references in any Act or Regulation to the said sections, or to ss. 27, and 28 of Act IX. of 1871, shall, in such territories, be read as made to ss. 15 and 16 of Act V. of 1882.

THE SECOND SCHEDULE.

(See section 4.)

First Division : Suits.

Description of suit.	Period of limitation.	Time from which period begins to run.
1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 (to provide for the adjudication of claims to waste-lands).	<i>Part I.—Thirty days.</i> Thirty days ...	When notice of the award is delivered to the plaintiff.
2.—For compensation for doing, or for omitting to do, an act in pursuance of any enactment in force for the time being in British India.	<i>Part II.—Ninety days.</i> Ninety days ...	When the act or omission takes place.
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property.	<i>Part III.—Six months.</i> Six months ...	When the dispossession occurs.
4.—Under Act No. IX of 1860 (to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers), section one.	Ditto ...	When the wages, hire, or price of work claimed accrue or accrues due.
5.—Under the Code of Civil Procedure, chapter xxxix (of summary procedure on negotiable instruments).	Ditto ...	When the instrument sued upon becomes due and payable.
6.—Upon a Statute, Act, Regulation, or Bye-law, for a penalty or forfeiture.	<i>Part IV.—One year.</i> One year ..	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan, or labourer, not provided for by this schedule, No. 4.	Ditto ...	When the wages accrue due.
8.—For the price of food or drink sold by the keeper of a hotel, tavern, or lodging-house.	Ditto ...	When the food or drink is delivered.
9.—For the price of lodging ...	Ditto ...	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto ...	When the purchaser takes under the sale sought to be impeached, physical possession of the whole of the property sold, or where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV. (contd.)— One year.</i>	
11.—By a person against whom an order is passed under section 280, 281, 282, or 335 of the Code of Civil Procedure to establish his right to, or to the present possession of, the property comprised in the order.	One year ...	The date of the order.
12.—To set aside any of the following sales :— (a) sale in execution of a decree of a Civil Court ; (b) sale in pursuance of a decree or order of a Collector or other officer of revenue ; (c) sale for arrears of Government revenue, or for any demand recoverable as such arrears ; (d) sale of a patni taluq sold for current arrears of rent. <i>Explanation.</i> —In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent.	Ditto ...	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	Ditto ...	The date of the final decision or order in the case by a Court competent to determine it finally.
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	Ditto ...	The date of the act or order.
15.—Against Government to set aside any attachment, lease, or transfer of immovable property by the revenue authorities for arrears of Government revenue.	Ditto ...	When the attachment, lease, or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto ...	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes.	Ditto ...	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	Ditto ...	The date of the refusal to complete.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV. (contd.)— One year.</i>	
19.—For compensation for false imprisonment.	One year ...	When the imprisonment ends.
20.—By executors, administrators, or representatives under Act No. XII. of 1855 (<i>to enable the executors, administrators, or representatives to sue and be sued for certain wrongs</i>).	Ditto ...	The date of the death of the person wronged.
21.—By executors, administrators, or representatives under Act No. XIII. of 1855 (<i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong</i>).	Ditto ...	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	Ditto ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto ...	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel ...	Ditto ...	When the libel is published.
25.—For compensation for slander ...	Ditto ...	When the words are spoken, or, when the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto ...	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto ...	The date of the breach.
28.—For compensation for an illegal, irregular, or excessive distress.	Ditto ...	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto ...	The date of the seizure.
	<i>Part V.—Two years.</i>	
30.—Against a carrier for compensation for losing or injuring goods.	Two years ...	When the loss or injury occurs.
31.—Against a carrier for compensation for delay in delivering goods.	Ditto ...	When the goods ought to be delivered.

THE SECOND SCHEDULE—(continued).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part V. (contd.)— Two years.</i>	
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years ...	When the perversion first becomes known to the person injured thereby.
33.—Under Act No. XII. of 1855 (<i>to enable executors, administrators, or representatives to sue and be sued for certain wrongs</i>) against an executor, administrator, or other representative.	Ditto ...	When the wrong complained of is done.
34.—For the recovery of a wife ...	Ditto ...	When possession is demanded and refused.
35.—For the restitution of conjugal rights.	Ditto ...	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.
36.—For compensation for any malfeasance, misfeasance, or nonfeasance independent of contract, and not herein specially provided for.	Ditto ...	When the malfeasance, misfeasance, or nonfeasance takes place.
	<i>Part VI.—Three years.</i>	
37.—For compensation for obstructing a way or a watercourse.	Three years ...	The date of the obstruction.
38.—For compensation for diverting a watercourse.	Ditto ...	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	Ditto ...	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto ...	The date of the infringement.
41.—To restrain waste.	Ditto ...	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto ...	When the injunction ceases.
43.—Under the Indian Succession Act, 1865, section 320 or 321. or under the Probate and Administration Act, 1881, section 139 or 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto ...	The date of the payment or distribution.
44.—By a ward who has attained majority, to set aside a sale by his guardian.	Ditto ...	When the ward attains majority.

* See Act V. of 1881, s. 156.

THE SECOND SCHEDULE—(continued).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
45.—To contest an award under any of the following Regulations of the Bengal Code:— VII. of 1822, IX. of 1825, and IX. of 1833.	<i>Part VI. (contd.)— Three years.</i> Three years ...	The date of the final award or order in the case.
46.—By a party bound by such award to recover any property comprised therein.	Ditto ...	The date of the final award or order in the case.
47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, chapter xl, or the Bombay Mámlatdárs' Courts Act, or by any one claiming under such person, to recover the property comprised in such order.	Ditto ...	The date of the final order in the case.
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same	Ditto ...	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats, or household furniture.	Ditto ...	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto ...	When the goods ought to be delivered.
52.—For the price of goods sold and delivered where no fixed period of credit is agreed upon.	Ditto ...	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto ...	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto ...	When the period of the proposed bill elapses.

THE SECOND SCHEDULE—(continued).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	<i>Part VI. (contd.)— Three years.</i> Three years ...	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto ...	When the work is done.
57.—For money payable for money lent.	Ditto ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto ...	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto ...	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand.	Ditto ...	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto ...	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto ...	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto ...	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto ...	When the accounts are stated in writing, signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto ...	When the time specified arrives or the contingency happens.
66.—On a single bond where a day is specified for payment.	Ditto ...	The day so specified.

THE SECOND SCHEDULE—(continued).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI. (contd.)— Three years.</i>		
67.—On a single bond where no such day is specified.	Three years	... The date of executing the bond.
68.—On a bond subject to a condition.	Ditto	... When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto	... When the bill or note falls due.
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto	... When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Ditto	... When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto	... When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand, and not accompanied by any writing restraining or postponing the right to sue.	Ditto	... The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Ditto	... The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Ditto	... When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto	... The date of the delivery to the payee.
77.—On a dishonoured foreign bill where protest has been made and notice given.	Ditto	... When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Ditto	... The date of the refusal to accept.

THE SECOND SCHEDULE—(continued.)

First Division: Suits—(continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI. (contd.)— Three years.</i>	
79.—By the acceptor of an accommodation bill against the drawer.	Three years ...	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note, or bond not herein expressly provided for.	Ditto ...	When the bill, note, or bond becomes payable.
81.—By a surety against the principal debtor.	Ditto ...	When the surety pays the creditor.
82.—By a surety against a co-surety.	Ditto ...	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually demnified.
84.—By an attorney or vakîl for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto ...	The date of the termination of the suit or business, or (where the attorney or vakîl properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties.	Ditto ...	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86.—On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto ...	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff or any other person.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.
88.—Against a factor for an account.	Ditto ...	When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto ...	When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI. (contd.)— Three years.</i>		
90.—Other suits by principals against agents for neglect or misconduct.	Three years ...	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto ...	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Ditto ...	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto ...	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto ...	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto ...	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Ditto ...	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto ...	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto ...	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto ...	The date of the plaintiff's advance in excess of his own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto ...	When the right to contribution accrues.
101.—For a seaman's wages.	Ditto ...	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Ditto ...	When the wages accrue due.

THE SECOND SCHEDULE—(continued).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII. (contd.) —Twelve years.</i>	
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Twelve years ...	When the possession of the defendant becomes adverse to the plaintiff.
	<i>Part IX.—Thirty years.</i>	
145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Ditto ...	When any part of the principal or interest was last paid on account of the mortgage debt.
	<i>Part X.—Sixty years.</i>	
147.—By a mortgagee for foreclosure or sale.	Sixty years ...	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Ditto ...	When the right to redeem or to recover possession accrues. Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in British Burmah, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto ...	When the period of limitation would begin to run under this Act against a like suit by a private person.

THE SECOND SCHEDULE—(continued).

Second Division: Appeals.

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge.	Seven days ...	The date of the sentence.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay, in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
152.—Under the Code of Civil Procedure to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed against.
153.—Under the same Code, section 601, to a High Court.	Ditto ...	The date of the order refusing the certificate.
154.—Under the Code of Criminal Procedure to any Court other than a High Court.	Ditto ...	The date of the sentence or order appealed against.
155.—Under the same Code to a High Court except in the cases provided for by No. 150 and No. 157.	Sixty days ...	Ditto.
156.—Under the Code of Civil Procedure to a High Court except in the cases provided for by No. 151 and No. 153.	Ninety days ...	The date of the decree or order appealed against.
157.—Under the Code of Criminal Procedure from a judgment of acquittal.	Six months ...	The date of the judgment appealed against.

Third Division: Applications.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure to set aside an award.	Ten days ...	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under chapter xxxix. of the Code of Civil Procedure.	Ditto ...	When the summons is served.
160.—For an order under section 629 of the same Code restoring to the file a rejected application for review.	Fifteen days ...	When the application for review is rejected.
161.—For the issue of a notice under section 258 of the same Code to shew cause why the payment or adjustment therein mentioned should not be recorded as certified.*	Twenty days ...	When the payment or adjustment is made.

* See Act XII. of 1879, s. 108.

THE SECOND SCHEDULE—(continued).

Third Division: Applications—(continued).

Description of application.	Period of limitation.	Time from which period begins to run.
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras, and Bombay, in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
163.—By a plaintiff for an order to set aside a dismissal by default.	Thirty days ...	The date of the dismissal.
164.—By a defendant for an order to set aside a judgment <i>ex parte</i> .	Ditto ...	The date of executing any process for enforcing the judgment.
165.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto ...	The date of the dispossession.
166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court.*	Ditto ...	The date of the sale.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.	Ditto ...	The date of the resistance, obstruction, or dispossession.
168.—For re-admission of an appeal dismissed for want of prosecution.	Ditto ...	The date of the dismissal.
169.—For a re-hearing of an appeal heard <i>ex parte</i> in the absence of the respondent.	Ditto ...	The date of the decree in appeal.
170.—For leave to appeal as a pauper.	Ditto ...	The date of the decree appealed against.
171.—Under section 363 or 365 of the Code of Civil Procedure by a person claiming to be the legal representative of a deceased plaintiff or appellant.*	Sixty days ...	The date of the plaintiff's or appellant's death.

* See Act XII. of 1879, s. 108.

THE SECOND SCHEDULE—(continued).

Third Division : Applications—(continued).

Description of application.	Period of limitation.	Time from which period begins to run.
*171A.—Under section 366 of the same Code, by the defendant.	Sixty days ...	The sixtieth day from the date of the plaintiff's death †
*171B.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Ditto ...	The date of the defendant's death.
*171C.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal.	Ditto ...	The date of the order for abatement or dismissal.
172.—By a purchaser at an execution-sale to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein.	Ditto ...	The date of the sale.
173.—For a review of judgment, except in the cases provided for by No. 162.	Ninety days ...	The date of the decree or order.
174.—By a creditor of an insolvent judgment-debtor under section 353 of the Code of Civil Procedure.	Ditto ...	The date of the publication of the schedule.
175.—For payment of the amount of a decree by instalments.	Six months ...	The date of the decree.
176.—Under the Code of Civil Procedure, section 516 or 525, that an award be filed in Court.	Ditto ...	The date of the award.
177.—For the admission of an appeal to Her Majesty in Council.	Ditto ...	The date of the decree appealed against.
178.—Application for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, section 230.	Three years ...	When the right to apply accrues.
179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230.	Ditto; or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the application next hereinafter mentioned has been made)

* See Act XII. of 1879, s. 163.

† See Act VIII. of 1880.

THE SECOND SCHEDULE—(continued).

Third Division: Applications—(continued).

Description of application.	Period of limitation.	Time from which period begins to run.
		<p>the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or</p> <p>5. (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure, section 248, or</p> <p>6. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.*</p> <p><i>Explanation I.</i>—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this Number shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order had been passed, severally, against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application</p>

* See Act XII. of 1879, s. 108.

THE SECOND SCHEDULE—(concluded).

Third Division: Applications—(concluded).

Description of application.	Period of limitation.	Time from which period begins to run.
<p>180.—To enforce a judgment, decree, or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council.</p>	<p>Twelve years ...</p>	<p>shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.</p> <p><i>Explanation II.</i>—"Proper Court" means the Court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure or otherwise) to execute the decree or order.</p> <p>When a present right to enforce the judgment, decree, or order accrues to some person capable of releasing the right: Provided that when the judgment, decree, or order has been revived, or some party of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment, or acknowledgment, or the latest of such revivors, payments, or acknowledgments, as the case may be.</p>



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THE GENERAL STAMP ACT, NO. I. OF 1879.

RECEIVED THE G.-G.'s ASSENT ON THE 17TH JANUARY 1879.

An Act to consolidate and amend the law relating to Stamps.

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Stamp Act, 1879."

Local extent. It extends to the whole of British India ;

Commencement. And it shall come into force on the first day of April, 1879.

2. On and after that day, the Acts specified in the third schedule shall be repealed to the extent specified in the third column of the same schedule. But all rules made under the General Stamp Act, 1869, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

Interpretation-clause. 3. In this Act, unless there is something repugnant in the subject or context,—

"Banker." (1.) "Banker" includes a bank and any person acting as a banker :

"Bill of exchange." (2.) "Bill of exchange" includes a hundí :

(3.) "Bill of lading" means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated :

"Bond." (4.) "Bond" means—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;

(b) any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and

(c) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another :

(5.) "Chargeable" means, as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed, or, where several persons executed the instrument at different times, first executed :

(6.) "Cheque" means a bill of exchange drawn on a banker and payable on demand :

(7.) "Chief Controlling Revenue Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces, the Board of Revenue : in the Presidency of Bombay, outside Sind and the limits of the town of Bombay, a Revenue Commissioner : in Sind, the Commissioner : in the Panjab, the Financial Commissioner ; and elsewhere, the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office :

(8.) "Collector" means, within the limits of the towns of Calcutta, Madras, and Bombay, the Collector of Calcutta, Madras, and Bombay, respectively, and without those limits, the Collector of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office .

(9.) "Conveyance" means any instrument by which property (whether moveable or immoveable) is transferred on sale :

(10.) "Duly stamped," as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed :

(11.) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue Authority.

(12.) "Lease" means a lease of immoveable property, and includes also

(a) a patti,

(b) a kabúliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immoveable property,

(c) any instrument by which tolls of any description are let, and

(d) any writing on an application for a lease intended to signify that the application is granted :

(13.) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of another, a right over specified property :

"Paper."

(14.) "Paper" includes vellum, parchment, or any other material on which an instrument may be written :

(15.) "Policy of insurance" means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage, or liability arising from an unknown or contingent event :

It includes a life-policy :

(16.) "Power-of-attorney" means any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act in the stead of the person executing it :

(17.) "Receipt" means any note, memorandum, writing, or advertisement, whereby any money or any bill of exchange, cheque, or promissory note, is acknowledged to

have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person :

"Schedule."

(18.) "Schedule" means schedule to this Act annexed :

"Settlement."

(19.) "Settlement" means any non-testamentary disposition, in writing, of moveable or immoveable property, made—

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or

(c) for any religious or charitable purpose :

It includes an agreement in writing to make such a disposition :

"Vessel."

(20.) "Vessel" means anything made for the conveyance by water of human beings or property :

"Written," "Writing."

(21.) "Written" and "writing" include every mode in which words or figures can be expressed upon paper.

Schedules to be read as part of Act.

4. The schedules and everything therein contained shall be read and construed as part of this Act.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

5. Subject to the exemptions contained in the second schedule, the Instruments chargeable following instruments shall be chargeable with duty. duty of the amount indicated in the first schedule as the proper duty therefor respectively, that is to say—

(a) every instrument mentioned in the first schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April, 1879 ;

(b) every bill of exchange, cheque, or promissory note drawn or made out of British India on or after that day, and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in British India ; and

(c) every instrument (other than a bill of exchange, cheque, or promissory note) mentioned in the first schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India.

6. Where, in the case of any sale, lease, mortgage, or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage, or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.

7. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties; but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty, and in respect of which the proper duty has been paid.

Power to reduce or remit duty.

8. The Governor-General in Council may, by order published in the *Gazette of India*,

(a) reduce or remit, whether prospectively, or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(b) cancel or vary such order to the extent of the powers hereby given.

B.—Of Stamps and the Mode of using them.

9. Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instrument, by means of stamps—

(a) according to the provisions herein contained, or

(b) when no such provision is applicable thereto—as the Governor-General in Council may by rule direct.

The rules made under this section may, among other matters, regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundis—the size of the paper on which they are written.

Use of adhesive stamps.

10. The following instruments may be stamped with adhesive stamps, namely:—

(a) instruments chargeable with the duty of one anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange, cheques, and promissory notes drawn or made out of British India;

(c) entry as an advocate, vakil, or attorney on the roll of a High Court;

(d) notarial acts; and

(e) transfers by endorsement of shares of public Companies and Associations.

11. Whoever affixes an adhesive stamp to any instrument chargeable with duty, and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again;

Cancellation of adhesive stamps.

and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

12. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instruments, and cannot be used for or applied to any other instrument.

How instruments stamped with impressed stamps are to be written.

13. No second instrument chargeable with duty shall be written upon Only one instrument to be on same stamp. a piece of stamped paper upon which an instrument chargeable with duty has already been written: provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Instrument written contrary to section 12 or 13 deemed unstamped.

14. Every instrument written in contravention of section 12 or 13 shall be deemed to be unstamped.

15. Where the duty with which an instrument is chargeable, or its Denoting duty. exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument in such manner as the Governor-General in Council may by rule prescribe.

C.—Of the Time of Stamping Instruments.

16. All instruments chargeable with duty, and executed by any person Instruments executed in British India. in British India, shall be stamped before or at the time of execution.

17. Every instrument chargeable with duty executed only out of British Instruments other than bills, cheques, and notes executed out of British India. India, and not being a bill of exchange, cheque, or promissory note, may be stamped within three months after it has been first received in British India; or, where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor-General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

17. The first holder in British India of any bill of exchange, cheque, Bills, cheques, and notes or promissory note drawn or made out of British drawn out of British India. India, shall, before he presents the same for acceptance or payment, or endorses, transfers, or otherwise negotiates the same in British India, affix thereto the proper stamp, and cancel the same:

Provided that if, at the time, any such bill, cheque, or note, comes into the hands of any holder thereof in British India, the proper adhesive stamp

is affixed thereto and cancelled in manner prescribed by section 11, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for duty.

19. Where an instrument is chargeable with *ad valorem* duty in respect

Conversion of amount expressed in certain currencies. of an amount expressed in pounds sterling, pounds currency, francs, or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale:—

One pound sterling or pound currency is equivalent to ten rupees :

One hundred francs are equivalent to forty rupees :

One Mexican or China dollar is equivalent to two rupees four annas.

20. Where an instrument is chargeable with *ad valorem* duty in respect

Conversion of amount expressed in other foreign currencies. of any money expressed in any other foreign or colonial currency, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

21. Where an instrument is chargeable with *ad valorem* duty in respect

Stock and marketable securities how to be valued of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

22. Where an instrument contains a statement of current rate of

Effect of statement of rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

23. Where interest is expressly made payable by the terms of an

Instruments reserving interest instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

24. Where any property is transferred to any person in consideration,

How transfer in consideration of debt, or subject to future payment, &c., to be charged. wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock, is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

25. Where an instrument is executed to secure the payment of an

Valuation in case of annuity, &c. annuity, or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be—

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount ;

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years next after the date of such instrument or conveyance; and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount which will or may be payable as aforesaid during the period of twelve years next after the date of such instrument or conveyance.

26. Where the amount or value of the subject-matter of any instrument

Stamp where value of subject-matter is indeterminate. chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before this Act comes into force) could not have been, ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

27. The consideration (if any) and all other facts and circumstances

Facts affecting duty to be set forth in instrument affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

28. (a) Where any property has been contracted to be sold for one

Direction as to duty in case of certain conveyances consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(b) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(c) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(d) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the consideration paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(e) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller; or where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

Duties by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

(a) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 21, 28, 29, 30, 44, 53, 54, 55, 57, and 60 (a) and (b) of the first schedule—by the person drawing, making, or executing such instrument:

(b) in the case of a policy of insurance—by the insured:

(c) in the case of a conveyance—by the grantee: in the case of a lease or agreement to lease—by the lessor or intended lessee:

(d) in the case of a counterpart of a lease—by the lessor:

(e) in the case of a partition—by the parties thereto in proportion to their respective shares in the property comprised therein, or when the partition is the execution of an order passed by a Revenue Authority, in such proportion as such Authority directs:

(f) in the case of an instrument of exchange—by the parties in equal shares, and

(g) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

30. When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable:

and may, for that purpose, require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly;

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

31. When an instrument brought to the Collector under section 30 is, in his opinion, one of a description chargeable with duty, and
 Certificate by Collector.

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 30, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped or not chargeable with duty, as the case may be, and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Nothing in this section shall authorize the Collector to endorse—

any instrument executed or first executed in British India, and brought to him after the expiration of one month from the date of its execution or first expiration (as the case may be) ;

any instrument executed or first executed out of British India, and brought to him after the expiration of three months after it has been first received in British India ; or

any instrument chargeable with the duty of one anna, or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

32. Every payment of a fee under section 30 shall be made in stamps,

Payment of fees under section 30 how made. or cash, as the Governor-General in Council may by rule direct.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

Examination and impounding of instruments

33. Every person having, by law or consent of parties, authority to receive evidence, and

every person in charge of a public office, except an officer of police,

before whom any instrument chargeable, in his opinion, with duty is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed :

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates' Act :

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may, from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provido.

Provided that—

1st, any such instrument, not being an instrument chargeable with a duty of one anna only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

2nd, nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates' Act ;

3rd, when an instrument has been admitted in evidence, such admission shall not, except as provided in section 50, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

35. When the person impounding an instrument under section 33 has, by law or consent of parties, authority to receive evidence, and admits such instrument in evidence upon payment of a penalty as provided by section 34, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

36. When a copy of an instrument is sent to a Collector under the first paragraph of section 35, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or

when such instrument has been impounded only because it has been written in contravention of section 12 or section 13, he may refund the whole penalty so paid—

37. When the Collector impounds any instrument under section 33, or receives any instrument sent to him under the second clause of section 35, he shall adopt the following procedure :—

(a.) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify, by endorsement thereon, that it is duly stamped, or that it not so chargeable (as the case may be), and shall

upon application made to him in this behalf, deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

(b.) If the Collector is of opinion that such instrument is chargeable with duty, and is not duly stamped, he shall require the payment of the proper duty, or the amount required to make up the same together with a penalty of five rupees; or if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion, as he thinks fit:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 12 or section 13, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause a of this section shall, for the purpose of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

38. If any instrument chargeable with duty, and which is not duly

Instruments unduly stamped by accident.

stamped, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such persons brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake, or urgent necessity, he may, instead of proceeding under sections 33 and 37, receive such amount, and proceed as next hereinafter prescribed.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

39. When the duty and penalty (if any) leviable in respect of any

Endorsement of instruments on which duty has been paid under section 34, 37, or 38.

instrument have been paid under section 34, section 37, or section 38, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon, that the proper duty, or (as the case may be) the proper duty and penalty (stating the amount of each), have been levied in respect thereof, and the name and residence of the person paying them.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section 34 shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate:

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

40. The payment of a penalty under this chapter in respect of an instru-

Prosecution for offence against stamp-law.

ment shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument:

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

41. When any duty or penalty has been paid, under section 34, section 37, or section 38, by any person in respect of an instrument, and by agreement, or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid; and for the purpose of such recovery any certificate granted in respect of such instrument under section 39 shall be conclusive evidence of the matters therein certified.

42. When any penalty is paid under section 34 or 37, the Chief Controlling Revenue Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

43. If any instrument sent to a Collector under the second paragraph of section 35 be lost, destroyed, or damaged during transmission, the person sending the same shall not be liable for such loss, destruction, or damage:

When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person, and authenticated by the person impounding such instrument.

44. When any bill of exchange or promissory note chargeable with the duty of on anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill, note, or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note, or cheque, shall, so far as respects the duty, be deemed good and valid.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note, or cheque.

CHAPTER V.

REFERENCE AND REVISION.

45. If any Collector acting under section 30, section 37, or section 38, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority, and such Authority shall consider the case and send a copy of its decision to the Collector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision.

46. The Chief Controlling Revenue Authority may state any case referred to it under section 45 or otherwise coming Reference by Revenue Authority to High Court. to its notice, and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be; if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces: if it arises in the territories for the time being administered by the Lieutenant-Governor of the Panjáb—to the Chief Court of the Panjáb: if it arises in the Central Provinces—to the High Court of Judicature at Bombay; and if it arises in any other part of British India—to the High Court of Judicature at Fort William.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

47. If the High Court or Chief Court is not satisfied that the state- Power of Court to call for ments contained in the case are sufficient to enable further particulars. it to determine the questions raised thereby, the Court may refer the case back to the Revenue Authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

48. The High Court or Chief Court, upon the hearing of any such case, Procedure in disposing of shall decide the questions raised thereby, and shall reference. deliver its judgment thereon, containing the grounds on which such decision is founded: and it shall send to the Revenue Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue Authority shall, on receiving such copy, dispose of the case conformably to such judgment.

49. If any Court other than a Court mentioned in section 46 feels doubt Reference by other Courts as to the amount of duty to be paid in respect of to High Court. any instrument under the first proviso to section 34, the Judge may draw up a statement of the case, and refer it with his own opinion thereon for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue Authority, he would, under section 46, refer the same, and such Court shall deal with the case as if it had been referred under section 46, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

50. When any Court in the exercise of civil or revenue jurisdiction Revision of certain deci- makes any order admitting any instrument in evi- sions of Courts regarding the dence as duly stamped or as not requiring a stamp, sufficiency of stamps. or upon payment of duty and a penalty under section 34, the Court to which appeals lie from, or references are made by, such first-mentioned Court, may, of its own motion, or on the application of the Collector, take such order into consideration; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 34, or without the payment of

a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector, and where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 39, or in section 40, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that no such prosecution shall be instituted where the amount (including duty and penalties) which, according to the determination of such Court, was payable in respect of the instrument under section 34, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 39.

CHAPTER VI.

ALLOWANCES FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

51. Subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

(a) The stamp on any paper inadvertently and undesignedly spoiled, obliterated, or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person:

(b) The stamp used or intended to be used for any bill of exchange, cheque, or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued, or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque, to be afterwards written thereon:

(c) The stamp used or intended to be used for any bill of exchange, cheque, or promissory note, signed by or on behalf of the drawer thereof, but which, from any omission or error, has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance, or accepted or endorsed, or, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange, cheque, or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque, or note:

(d) The stamp used for any of the following instruments, that is to say—

- (1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning :
- (2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended :
- (3) an instrument executed by any party thereto, but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed :
- (4) an instrument executed by any party thereto, which for want of the execution thereof by some material party, and his inability or refusal to sign the same, is, in fact, incomplete and insufficient for the purpose for which it was intended :
- (5) an instrument executed by any party thereto, which, by reason of the refusal of any person to act under the same, or by the refusal or non acceptance of any office thereby granted, totally fails of the intended purpose :
- (6) an instrument executed by any party thereto which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped :
- (7) an instrument executed by any party thereto, which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument—

- (a) such instrument is given up to be cancelled :
- (b) the application for relief is made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date of execution of the substituted instrument, and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India :

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

52. When any person has inadvertently used, for an instrument charge-

Allowance for misused able with duty, a stamp of a description other than stamps than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section 14, owing to such instrument having been written in contravention of the provisions of section 12, the Collector may, on application made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, it charge-

able with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof (a) other stamps of the same description and value, or (b), if required, and he thinks fit, stamps of any other description to the same amount in value, or (c), at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

54. When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bona fide* intention to use it, and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date on which it is so delivered.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

55. The Local Government, subject to the control of the Governor-General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Power to make rules generally to carry out Act.

56. The Governor-General in Council may make rules consistent herewith to carry out generally the purposes of this Act.

57. All powers to make appointments, rules, and orders conferred by this Act, may be exercised from time to time as occasion requires.

Certain powers exercisable from time to time.

58. All rules made under this Act, other than rules made under section 55, shall be published in the *Gazette of India*, and all rules made under section 55 shall be published in the local *Gazette*. All rules published as required by this section shall, upon such publication, have the force of law.

Publication of rules.

59. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque, or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

60. Nothing herein contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to Court-fees.

Saving as to Court-fees.

61. Every Local Government shall cause this Act to be carefully translated into the principal vernacular languages of the territories administered by it. A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

Act to be translated, indexed, and sold cheaply.

CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

61. Any person drawing, making, issuing, endorsing, or transferring, or signing otherwise than as a witness, of presenting instrument not duly stamped. for acceptance or payment, or accepting, paying, or receiving payment of, or in any manner negotiating any bill of exchange, cheque, or promissory note without the same being duly stamped,

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and any person voting or attempting to vote under any proxy not duly stamped, shall, for every such offence, be punished with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section 34, section 37, or section 50, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument, upon the person who paid such penalty.

62. Any person required by section 11 to cancel an adhesive stamp, Penalty for failure to cancel and failing to cancel such stamp in manner prescribed by that section, shall be punished with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

63. Any person who, with intent to defraud the Government of any duty,

(a) executes any instrument in which all the facts and circumstances required by section 22 to be set forth in such instrument are not fully and truly set forth, or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

64. Any person who, being required under section 58 to give a receipt, refuses or neglects to give the same, or who, with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees.

Penalty for not making out policy ;

65. Every person who—

(a) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance ; or

(b) makes, executes, or delivers out any policy which is not duly stamped, or making, &c., any policy not duly stamped, ed, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be punished with fine which may extend to two hundred rupees.

66. Any person drawing or executing a bill of exchange or a policy of

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

67. Whoever, with intent to defraud the Government of duty, draws,

Penalty for post-dating bills, &c. ;

makes, or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note, has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays, or receives payment of, such bill or note, or in any manner negotiates the same,

and whoever, with the like intent, practises, or is concerned in, any act, for other devices to defraud the revenue. contrivance, or device not specially provided for by this Act or any other law for the time being in force,

shall be punished with fine which may extend to one thousand rupees.

68. Any person appointed to sell stamps who disobeys any rule made

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

under section 55, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

69. No prosecution in respect of any offence punishable under this Act,

Institution and conduct of prosecutions.

or the General Stamp Act, 1869, or any Act thereby repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

The Chief controlling Revenue Authority, or any officer authorized by it in this behalf, may stay any such prosecution or compound any such offence.

70. No Magistrate other than a Presidency Magistrate and a Magistrate

Jurisdiction of Magistrates.

whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

71. Every such offence committed in respect of any instrument may be

Place of trial.

tried in any district or presidency-town in which such instrument is found, as well as in any district or presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.

72. Nothing in this Act shall be deemed to prevent any person from

Operation of other laws not barred.

being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it :

Provided that no person shall be punished twice for the same offence.

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession	One anna.
2. ADMINISTRATION-BOND	The same duty as a Security-Bond (No. 14).
ADOPTION-DEED ... See <i>Instrument</i> , No. 38.	
3. AFFIDAVIT or declaration in writing on oath or affirmation made before a person authorized by law to administer an oath See <i>Exemptions</i> , Schedule II. (No. 1).	One rupee.
✓ 4. AGREEMENT TO LEASE	The same duty as a Lease (No. 39).
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT	One anna.
See <i>Exemptions</i> , Schedule II. (No. 2).	
(a.) If relating to the sale of any Government security, share in a Company or Association, or Bill of Exchange (b.) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the right so relinquished (c.) If not otherwise provided for by this Act	Four annas. Eight annas.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
6. APPOINTMENT, in execution of a power, whether of trustees or of property moveable or immoveable, where made by any writing not being a Will	Fifteen rupees.
7. APPRAISEMENT or valuation made otherwise than under an order of the Court in the course of a suit	The same duty as an Award (No. 10).
See <i>Exemptions</i> , Schedule II. (Nos. 3 & 4).	
APPRENTICESHIP-DEED See <i>Instrument</i> , No. 31.	
8. ARTICLES OF ASSOCIATION OF A COMPANY	Twenty-five rupees.
9. ARTICLES OF CLERKSHIP or contract, whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court	Two hundred and fifty rupees.
ASSIGNMENT ... See <i>Conveyance</i> , No. 21, and <i>Transfer</i> , No. 60.	
AUTHORITY TO ADOPT See <i>Instrument</i> , No. 38.	
10. AWARD, that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit <div style="display: inline-block; vertical-align: middle; margin-left: 10px;"> (a.) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ... (b.) In any other case ... </div>	The same duty as a Bond (No. 13) for such amount. Five rupees.
See <i>Exemptions</i> , Schedule II. (No. 6).	

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.			PROPER STAMP-DUTY.		
11. BILL OF EXCHANGE OR PROMISSORY NOTE, not being a cheque, bond, bank-note, or currency-note ...	(a.) When payable on demand and the amount exceeds Rs. 20 ...		One anna.		
	(b.) When payable otherwise than on demand, but not more than one year after date or sight.		If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
		Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.
	If the amount of the bill, or note does not exceed	200	0 2 0	0 1 0	0 1 0
	If it exceeds 200 and does not exceed	400	0 4 0	0 2 0	0 2 0
	"	400 600	0 6 0	0 3 0	0 2 0
	"	600 1,000	0 10 0	0 5 0	0 4 0
	"	1,000 1,200	0 12 0	0 6 0	0 4 0
	"	1,200 1,600	1 0 0	0 8 0	0 6 0
"	1,600 2,500	1 8 0	0 12 0	0 8 0	
For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,000 ..		1 8 0	0 12 0	0 8 0	
For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000 .		3 0 0	1 8 0	1 0 0	
And for every Rs. 10,000 or part thereof in excess of Rs. 30,000		6 0 0	3 0 0	2 0 0	
(c.) When payable at more than one year after date or sight ...		The same duty as a Bond (No. 13) for the amount of such bill or note.			

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued.)

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
12. BILL OF LADING	Four annas.
See <i>Exemption</i> , Schedule II. (No. 7).	If a Bill of Lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.
13. BOND (not otherwise provided for by this Act)	Two annas.
See <i>Administration-Bond</i> (No. 2), <i>Customs-Bond</i> (No. 24), <i>Indemnity-Bond</i> (No. 28), <i>Security-Bond</i> (No. 14).	Four annas.
See <i>Exemptions</i> , Schedule II. (No. 8).	Eight annas.
14. BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money received by virtue thereof ...	The same duty as a Bond (No. 13).
See <i>Exemptions</i> , Schedule II. (Nos. 8 and 12).	Five rupees.
15. BOTTOMRY-BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage	The same duty as a Bond (No. 13).

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>16. CERTIFICATE OF SALE granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer</p>	<p>The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase money.</p>
<p>17. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip, or stock in or of any Company or Association, or to become proprietor of shares, scrip, or stock in or of any Company or Association</p>	<p>One anna.</p>
<p>18. CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer</p>	<p>One rupee.</p>
<p>19. CHEQUE, for an amount exceeding twenty rupees</p>	<p>One anna.</p>
<p>20. COMPOSITION-DEED, that is to say, any instrument executed by a debtor, whereby he conveys his property for the benefit of his creditors,</p>	

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors</p>	Ten rupees.
<p>21. CONVEYANCE, not being a TRANSFER mentioned in No. 60.</p>	<p>When the amount of the consideration for such conveyance as set forth therein does not exceed ... Rs. 50 Eight annas. When it exceeds Rs. 50, but does not exceed ... 100 One rupee.</p>
<p>See <i>Exemptions</i>, Schedule II. (Nos. 5 and 17).</p>	<p>For every Rs 100 or part thereof in excess of Rs. 100 up to ... 1,000 One rupee. and for every Rs 500 or part thereof in excess of ... 1,000 Five rupees.</p>
CO-PARTNERSHIP	See <i>Instrument</i> , No. 32.
<p>22. COPY OR EXTRACT, certified to be a true copy or extract, by or by order of any public officer, and not chargeable under the law for the time being in force relating to Court-fees.</p>	<p>(a) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee ... Eight annas. (b.) In any other case ... One rupee.</p>
<p>See <i>Exemptions</i>, Schedule II. (Nos. 9 and 10).</p>	

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
23. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid	(a.) If the duty with which the original instrument is chargeable does not exceed one rupee. (b.) In any other case ...
24. CUSTOMS-BOND	The same duty as is payable on the original. One rupee.
25. DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a Will	The same duty as a Security-Bond (No. 14). Fifteen rupees.
26. DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees	One anna.
DEPOSIT OF TITLE-DEEDS	See <i>Instrument</i> , No. 29.
DISSOLUTION OF PARTNERSHIP	See <i>Instrument</i> , No. 33.
DUPLICATE	See <i>Counterpart</i> , No. 23.

SCHEDULE I.—(continued).
 STAMP-DUTY ON INSTRUMENTS—(continued).
 (See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>27. ENTRY AS AN ADVOCATE, VAKIL, OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by Letters Patent, "or by the Legal Practitioners' Act, 1884."¹⁴</p> <p>See <i>Exemptions</i>, Schedule II. (No. 11). EXCHANGE ... See <i>Instrument</i>, No. 35. EXTRACT ... See <i>Copy</i>, No. 22. FURTHER CHARGE See <i>Instrument</i>, No. 30. GIFT ... See <i>Instrument</i>, No. 36.</p>	<p>In the case of an Advocate or Vakil Five hundred rupees.</p> <p>In the case of an Attorney ... Two hundred and fifty rupees.</p>
<p>28. INDEMNITY-BOND INSPECTORSHIP-DEED See <i>Composition-deed</i>, No. 20</p>	<p>The same duty as a Security Bond (No. 14).</p>
<p>29. INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property ...</p>	<p>(a.) When such loan is repayable more than three months, but not more than one year, from the date of such instrument. The same duty as a Bill of Exchange (No 11 (b)) for the amount secured.</p> <p>(b.) When such loan is repayable not more than three months from the date of such instrument. Half the duty payable on a Bill of Exchange (No. 11 (b)) for the amount secured.</p>
<p>30. INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY ...</p>	<p>(a.) When the original mortgage is one of the description referred to in No. 44, clause (a), of this schedule. The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument.</p> <p>(b.) When such mortgage is one of the description referred to in No. 44, clause (b), of this schedule. The same duty as a Bond (No. 13) for the amount secured by such instrument.</p>

* The words quoted are inserted by Act IX. of 1884, s. 10.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
31. INSTRUMENT OF APPRENTICESHIP, including every writing relating to the service or tuition of any apprentice, clerk, or servant, placed with any master to learn any profession, trade, or employment, except articles of clerkship (No. 9 of this schedule)	Five rupees.
See <i>Exemptions</i> , Schedule II. (No. 12 (c)).	
32. INSTRUMENT OF CO-PARTNERSHIP	Ten rupees.
33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP	Five rupees.
34. INSTRUMENT OF DIVORCE, that is to say, any instrument by which any person effects the dissolution of his marriage	One rupee.
35. INSTRUMENT OF EXCHANGE of any property	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument.
36. INSTRUMENT OF GIFT (OTHER THAN A SETTLEMENT OR WILL)	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
37. INSTRUMENT OF PARTITION	The same duty as a Bond (No. 13) for the amount of the value of the property divided as set forth in such instrument.
38. INSTRUMENT (OTHER THAN A WILL) CONFERRING OR PURPORTING TO CONFER AN AUTHORITY TO ADOPT	Ten rupees.
INSURANCE.	See <i>Policy No. 49.</i>
39. LEASE. See <i>Agreement to lease</i> (No. 4). See <i>Exemptions, Schedule II.</i> (No. 13).	(a.) Where by such lease the rent is fixed and no premium is paid or delivered and such lease purports to be for a term— of less than one year ...
	The same duty as a Bond (No. 13) for the whole amount payable or deliverable under such lease.
	of not less than one year, but not more than three years ...
	The same duty as a Bond (No. 13) for the average annual rent reserved.
	exceeding three years ...
	The same duty as a conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent reserved.
	(b.) Where by such lease the rent is fixed and no premium is paid or delivered and such lease does not purport to be for any definite term ...
	The same duty as a conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
39. LEASE—(contd.). See <i>Agreement to lease</i> (No. 4). See <i>Exemptions</i> , Sche- dule II. (No. 13).	<div data-bbox="314 363 594 651" data-kind="parent" data-rs="2"> (c.) Where the lease is granted for a fine or premium, and where no rent is reserved ... (d.) Where the lease is granted for a fine or premium in addition to rent reserved ... </div> <div data-bbox="608 432 878 1121" data-kind="parent" data-rs="2"> <p>The same duty as a Convey- ance (No. 21) for a con- sideration equal to the amount or value of such fine or premium as set forth in the lease.</p> <p>The same duty as a Convey- ance (No. 21) for a con- sideration equal to the amount or value of such fine or premium as set forth in the lease, in ad- dition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered:</p> <p>Provided that, when an agreement to lease is stamped with the <i>ad</i> <i>valorem</i> stamp required for a lease, and a lease in pursuance of such agree- ment is subsequently exe- cuted, the duty on such lease shall not exceed eight annas.</p> </div>
40. LETTER OF ALLOT- MENT OF SHARES in any Company or proposed Company, or in respect of any loan to be raised by any Company or proposed Company	One anna.
41. LETTER OF CRE- DIT, that is to say, any instrument by which one person au- thorizes another to give credit to the per- son in whose favour it is drawn	One anna.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>42. LETTER OF LI- CENSE, that is to say, any agreement be- tween a debtor and his creditors that the latter shall, for a spe- cified time, suspend their claims, and allow the debtor to carry on business at his own discretion</p>	<p>Ten rupees.</p>
<p>43. MEMORANDUM OF ASSOCIATION OF A COMPANY</p>	<p>Fifteen rupees.</p>
<p>44. MORTGAGE-DEED not provided for by No. 14, No. 15, No. 29, or No. 55 of this schedule</p>	<p>The same duty as a Convey- ance (No 21) for a consi- deration equal to the amount secured by such deed.</p>
<p>See <i>Exemptions</i>, Schedule II. (No. 12 and No. 14 (b)).</p>	<p>The same duty as a Bond (No. 13) for the amount secured by such deed.</p>
<p>45. NOTARIAL ACT, that is to say, any instrument, endorse- ment, note, attesta- tion, certificate, or entry made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public</p>	<p>One rupee.</p>
<p>46. NOTE OR MEMO- RANDUM, sent by a Broker or Agent to his principal, intimat- ing the purchase or</p>	

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.				PROPER STAMP-DUTY.		
sale on account of such principal of any goods, stock, or marketable security exceeding in value twenty rupees.				One anna.		
47. NOTE OF PROTEST BY THE MASTER OF A SHIP				Eight annas.		
PARTITION ... See <i>Instrument</i> , No 37.						
PARTNERSHIP ... See <i>Instrument</i> , Nos. 32 and 33.						
48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India				One hundred rupees.		
				If drawn singly.		If drawn in duplicate, for each part.
				Rs. A. P.		Rs. A. P.
(a) In the case of Sea-insurance—						
When the amount insured does not exceed Rs. 1,000				0 4 0		0 2 0
And for every further sum of Rs. 1,000 or part thereof in excess of 1,000				0 4 0		0 2 0
49. POLICY OF INSURANCE See <i>Exemption</i> , Schedule II. (No. 14 (a)).						
(b.) In the case of any other insurance—						
When the amount insured does not exceed ... 1,000				0 6 0		0 3 0
And for every further sum of Rs. 1,000 or part thereof in excess of 1,000				0 6 0		0 3 0

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>50 POWER-OF-ATTORNEY, not being a proxy chargeable under No. 51.</p>	<p>(a.) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction. Eight annas.</p> <p>(b.) When authorizing one person or more to act in a single transaction other than that mentioned in (a) ... One rupee.</p> <p>(c.) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally. Five rupees.</p> <p>(d.) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ... Ten rupees.</p> <p>(e.) In any other case ... One rupee for each person authorized.</p>
<p><i>Explanation.</i>—For the purposes of this number more persons than one, when belonging to the same firm, shall be deemed to be one person.</p>	
<p>PROMISSORY NOTE ... See <i>Bill of Exchange</i>, No. 11.</p>	
<p>PROTEST, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note ... See <i>Notarial Act</i>, No. 45.</p>	

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such ... See <i>Notarial Act, No. 45.</i></p>	
<p>51. PROXY empowering any person to vote at any one meeting of—</p> <p>(a.) Members of a Company whose stock or funds is or are divided into shares and transferable:</p> <p>(b.) Municipal Commissioners:</p> <p>(c.) Proprietors, Members, or Contributors to the funds of any Institution ...</p>	<p>... One anna.</p>
<p>52. RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES</p>	<p>... One anna.</p>
<p>See <i>Exemptions, Schedule II. (No. 15).</i></p>	

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
53. RE-CONVEYANCE OF MORTGAGED PROPERTY ...	<div data-bbox="422 373 686 533">(a.) If the consideration for which the property was mortgaged does not exceed Rs. ... 1,000</div> <div data-bbox="709 507 972 619">The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the re-conveyance.</div> <div data-bbox="422 683 816 708">(b.) In any other case ... Ten rupees.</div>
54. RELEASE, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property ...	<div data-bbox="422 751 686 836">(a.) If the amount or value of the claim does not exceed ... 1,000</div> <div data-bbox="709 815 972 900">The same duty as a Bond (No. 13) for such amount or value as set forth in the release.</div> <div data-bbox="422 922 816 948">(b.) In any other case ... Five rupees.</div>
55. RESPONDENTIA-BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination ...	The same duty as a Bond (No. 13).
56. REVOCATION OF ANY TRUST of or concerning any property by any instrument other than a Will ...	Ten rupees.
57. SETTLEMENT ...	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
58. SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel	One anna.
SPECIFICATION ... See <i>Petition</i> , No. 48.	
59. SURRENDER OF LEASE	The duty with which such lease is chargeable.
See <i>Exemption</i> , Schedule II. (No. 16).	
(a.) When the duty with which the lease is chargeable does not exceed five rupees...	
(b.) In any other case ...	Five rupees.
(a.) Of shares in a Com- pany or Association.	One-quarter of the duty payable on a Conveyance (No. 21).
(b.) Of any interest se- cured by a Bond, Lease, Mortgage- deed, or Policy of Insurance—	
1. If the duty on such Bond, Lease, Mort- gage-deed, or Policy does not exceed five rupees	The duty with which such Bond, Lease, Mortgage- deed, or Policy of Insur- ance is chargeable.
60. TRANSFER ...	
See <i>Exemptions</i> , Schedule II. (No. 17).	
2. In any other case ...	Five rupees.
(c.) Of any property under the Administrator- General's Act, 1874, section 31 ...	Ten rupees.
(d.) Of any trust-pro- perty from one trustee to another trustee without con- sideration	Five rupees.
TRUST See <i>Declaration</i> , No. 25. <i>Revocation</i> , No. 56.	

SCHEDULE I.—(concluded).

STAMP-DUTY ON INSTRUMENTS—(concluded).

(See section 5.)

* DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>VALUATION ... See <i>Appraisement, No. 7.</i></p> <p>61. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse, or wharf, such instru- ment being signed or certified by or on be- half of the person in whose custody such goods may be ...</p>	<p>Four annas.</p>

SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. Affidavit or declaration in writing when made—
 - (a) as a condition of enlistment under the Indian Articles of War ;
 - (b) for the immediate purpose of being filed or used in any Court or before the officer of any Court ; or
 - (c) for the sole purpose of enabling any person to receive any pension or charitable allowance.
2. Agreement or memorandum of agreement—
 - (a) for or relating to the sale of goods or merchandize exclusively, not being a note or memorandum chargeable under No. 46 of Schedule I ;
 - (b) for service in British Burma under the Chief Commissioner of that Province entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner ;
 - (c) made by raiyats for the cultivation of the poppy for Government ;
 - (d) made in the form of tenders to the Government of India for or relating to any loan ;
 - (e) made regarding the occupancy of land denoted by a survey number, and the payment of revenue therefor, under Bombay Act I. of 1865 ;
 - (f) made under the European Vagrancy Act, 1874, section 17.
3. Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.
4. Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.
5. Assignment of copyright by entry made under Act No. XX. of 1847, section 5.
6. Award under Bombay Act VI. of 1873, section 81, or Bombay Act III. of 1874, section 18.
7. Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.
8. Bond when executed by—
 - (a) the sureties of middlemen (lambardárs or khattadárs) taking advances for the cultivation of the poppy for Government ;
 - (b) headmen nominated under rules framed in accordance with Bengal Act III. of 1876, section 99, for the due performance of their duties under that Act ;
 - (c) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem
9. Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.

SCHEDULE II.—(*continued*).INSTRUMENTS EXEMPTED FROM STAMP-DUTY—(*continued*).

10. Copy of registration of emigrants furnished under section 27 or section 29 of the Indian Emigration Act, 1871.
11. Entry—
 - (a) of an advocate, vakil, or attorney, on the roll of any High Court, when he has previously been enrolled in a High Court ; *
 - (b) on the roll of any High Court, as an attorney, of an articulated clerk bound as such before this Act comes into force.
12. Instruments—
 - (a) executed by persons taking advances under the Land Improvement Act, 1871, or by their sureties, as security for the repayment of such advances ;
 - (b) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof ;
 - (c) of apprenticeship executed by a Magistrate under Act XIX. of 1850, or by which a person is apprenticed by or at the charge of any public charity.
13. Leases and Counterparts—
 - (a) Leases of fisheries granted under the Burma Fisheries Act, 1875 ;
 - (b) Lease, executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees ;
 - (c) Counterpart of any lease granted to a cultivator.
14. Letter—
 - (a) of cover or engagement to issue a policy of insurance :
Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned ;
 - (b) of hypothecation accompanying a bill of exchange.
15. Receipt—
 - (a) endorsed on or contained in any instrument duly stamped, or exempted under this schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest, or annuity, or other periodical payment thereby secured ;
 - (b) for any payment of money without consideration ;
 - (c) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inam lands ;
 - (d) for pay by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity ;
 - (e) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity ;

* The words "established by Royal Charter" have been repealed by Act IX. of 1884, s. 10.

SCHEDULE II.—(*continued*).

INSTRUMENTS EXEMPTED FROM STAMP-DUTY—(*continued*).

- (f) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity ;
- (g) given by a headman or lambardar for land-revenue or taxes collected by him ;
- (h) given for money or securities for money deposited in the hands of any banker, to be accounted for :

Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for :

Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

16. Surrender of lease when such lease is exempted from duty.

17. Transfers by endorsement—

- (a) of a bill of exchange, cheque, or promissory note ;
- (b) of a bill of lading ;
- (c) of a policy of insurance ;
- (d) of mortgages of rates and taxes authorized by any Act for the time being in force in British India ;
- (e) of securities of the Government of India ;
- (f) of a warrant for goods (No 61 of schedule I.).

General Exemption.

18. Any instrument executed by, or on behalf of, or in favour of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

SCHEDULE III.

ACTS REPEALED.

Number and year.	Subject or short title.	Extent of repeal.
XX. of 1847 ...	Copyright	In section five, the words, "without being subject to any stamp or duty."
X. of 1866 ...	The Indian Companies Act.	In section eleven, the words, "shall bear the same stamp as if it were a deed, and."
		In section sixteen, the words, "they shall bear the same stamp as if they were contained in a deed."
XVIII. of 1869 ...	The General Stamp Act .	The whole.
VII. of 1871 ...	The Indian Emigration Act	In sections twenty-seven and twenty-nine, the words, "which shall not require a stamp."
XIX. of 1873 ...	The North-Western Provinces Land Revenue Act, 1873.	In section one hundred and eighty-three, the words "stamped or."
II. of 1874 ...	The Administrator-General's Act.	In section thirty-one, the words, "bearing a stamp of ten rupees and."
IX. of 1874 ..	The European Vagrancy Act.	In section seventeen, the words, "may be on unstamped paper and."
XV. of 1876 ...	Bombay Municipal Debentures.	In section two, the words, "and no such indorsement shall be chargeable with any stamp-duty."

THE LEGAL PRACTITIONERS' ACT,

NO. XVIII. OF 1879.

RECEIVED THE G.-G.'s ASSENT ON THE 29TH OCTOBER 1879.

An Act to consolidate and amend the Law relating to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating to legal practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Panjáb, Oudh, the Central Provinces, and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit ; It is hereby enacted as follows —

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Legal Practitioners' Act, 1879," and shall come into force on the first day of January, 1880

Short title
Commencement.

Local extent.

This section and section 2 extend to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces, and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, and Assam. But any other Local Government may, from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of January, 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

Repeal of enactments.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given, and orders passed under any enactment hereby repealed, shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given, and passed under this Act.

Saving of rules, &c.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

References to repealed enactments.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Judge:"

"Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated :

- "Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX. of 1850 or Act No. XI. of 1865 :
- "Subordinate Court:"
- "Revenue office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents :
- "Revenue-office :"
- "Legal practitioner" means an advocate, vakil, or attorney of any High Court, a pleader, mukhtar, or revenue-agent.
- "Legal practitioner."

CHAPTER II.

OF ADVOCATES, VAKILS, AND ATTORNEYS.

4. Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the Letters Advocates and vakils Patent constituting such Court, or "under section 41 of this Act"* shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue agents ; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any revenue-office :

Provided that no such vakil shall be entitled to practise under this section before a Judge of the High Court, Division Court, or High Court exercising original jurisdiction in a presidency town.

5. Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any revenue-office.

The High Court of the province in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of an attorney so practising.

CHAPTER III.

OF PLEADERS AND MUKHTARS.

Power to make rules as to qualification, &c., of pleaders and mukhtars.

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

* The words quoted have been substituted for the words, "as an advocate on the roll of the Chief Court of the Panjab," by Act IX. of 1884, s. 2.

(a) the qualifications, admission, and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court ;

(b) the qualifications, admission, and certificates of proper persons to be mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court ;

(c) the fees to be paid for the examination and admission of such persons ; and

(d) the suspension and dismissal of such pleaders and mukhtárs.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law : Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

7. On the admission, under section 6, of any person as a pleader or mukhtár, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts, and, in the case of a pleader, also the revenue-offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

8. Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue-office mentioned therein, and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted ; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly ; and thereupon he may appear, plead, and act in such Court or office, and in any Court or revenue-office subordinate thereto.

9. Every mukhtár holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein, and situate within the same limits ; and subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly ; and thereupon he may practise as a mukhtár in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure) appear, plead, and act in any such Criminal Court and any Court subordinate thereto.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section 7, and has been enrolled in such Court or in some Court to which it is subordinate:

Provided that persons who have been admitted as revenue-agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and, on being so enrolled, may appear, plead, and act in such Court in suits under Bengal Act No. VIII. of 1869 (*to amend the procedure in suits between Landlord and Tenant*), or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

11. Notwithstanding anything contained in the Code of Civil Procedure, the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of mukhtárs practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

12. The High Court may suspend or dismiss any pleader or mukhtár holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or mukhtár, as the case may be.

Suspension and dismissal of pleaders and mukhtárs convicted of criminal offence.

Suspension and dismissal of pleaders and mukhtárs guilty of unprofessional conduct.

13. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss

any pleader holding a certificate as aforesaid who takes instructions in any case except from the party on whose behalf he is retained, or a private servant of such party, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or

any pleader or mukhtár holding a certificate as aforesaid who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

Provided that where the party is—

(a) a pardánashín woman, or

(b) unable for any sufficient cause to instruct the pleader in person, nothing in this section shall make a pleader liable to suspension or dismissal merely by reason that he has taken instructions from a relative or friend authorized by the party to give such instructions and not receiving any remuneration in respect thereof.*

14. If any such pleader or mukhtár practising in any subordinate Court or in any revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.

* This proviso has been added by Act IX. of 1884, s. 3.

Such copy and notice shall be served upon the pleader or mukhtár at least fifteen days before the day so appointed.

On such day or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established, and considers that the pleader or mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend, or dismiss the pleader or mukhtár.

Any District Judge, or with his sanction any Judge subordinate to him, "any Judge of a Court of Small Causes of a Presidency-town,"* any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue Authority not inferior to a Collector, or with the Collector's sanction any Revenue Officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtár charged before him or it under this section.

Every report made to the High Court under this section shall (a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(b) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge;

(c) when made by the Magistrate of the District, be made through the Sessions Judge;

(d) when made by any Revenue Officer subordinate to the Chief Controlling Revenue Authority, be made through such Revenue Authorities as the Chief Controlling Revenue Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate, or Revenue Authority through whom or which it is made.

15. The High Court, in any case in which a pleader or mukhtár has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record, and pass such order thereon as it thinks fit.

Power to call for record in case of acquittal under section 14.

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following (namely):—

Power to make rules for mukhtárs on appellate side of High Court.

(a) the qualifications and admission of proper persons to be mukhtárs practising on the appellate side of such Court;

(b) the fees to be paid for the examination and admission of such persons;

(c) the security which they may be required to give for their honesty and good conduct;

(d) the suspension and dismissal of such mukhtárs; and

(e) declaring what shall be deemed to be their functions, powers, and duties;

* The words quoted have been inserted by Act LX. of 1884, s. 4.

and may prescribe and impose fines for infringement of such rules not exceeding in any case five hundred rupees ; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.

OF REVENUE-AGENTS.

Power to make rules as to qualifications, &c, of revenue-agents.

17. The Chief Controlling Revenue Authority may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(a) the qualifications, admission, and certificates of proper persons to be revenue-agents ;

(b) the fees to be paid for the examination and admission of such persons ;

(c) the suspension and dismissal of such revenue-agents ; and

(d) declaring what shall be deemed to be their functions, powers, and duties.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

18. On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue Authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue Authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer, and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue Authority.

19. Every revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein, and situate within the limits of the territory under the Chief Controlling Revenue Authority ; and, subject to such rules as the Chief Controlling Revenue Authority may, from time to time, make in this behalf the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue-agent in such office and in any revenue-office subordinate thereto.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any

No person to act as agent in revenue-offices unless qualified.

revenue-office, unless he holds a certificate issued under section 18, and has been enrolled in such office or some other office to which it is subordinate :

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same.

21. The Chief Controlling Revenue Authority may suspend or dismiss

Dismissal of revenue-agent any revenue-agent holding a certificate issued convicted of criminal offence. under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

22. The Chief Controlling Revenue Authority may also, after making

Dismissal of revenue-agent such enquiry as it thinks fit, suspend or dismiss guilty of unprofessional conduct. any revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

23. If any revenue-agent holding a certificate issued under this Act is

Procedure when revenue-agent is so charged in subordinate office. charged with any such conduct in any office subordinate to the Chief Controlling Revenue Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue Authority ; and such Authority shall proceed to acquit, suspend, or dismiss him.

Any Revenue Officer not inferior to a Collector, and, with the Collector's sanction, any Revenue Officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue Authority, suspend from practice any revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

24. The Chief Controlling Revenue Authority, in any case in which a

Power to Chief Controlling Revenue Authority to call for record. revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue Authority, may call for the record, and pass such order thereon as seems fit.

CHAPTER V.

OF CERTIFICATES.

25. Every certificate, whether original or renewed, issued under this Act, shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed "and of such description as the Local Government may from time to time prescribe :—"

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

26. When any pleader, mukhtár, or revenue-agent, is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue Authority (as the case may be) orders him to deliver the same.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS, AND REVENUE-AGENTS.

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's advocate, pleader, vakíl, mukhtár, or attorney upon all proceedings (a) on the appellate side of such Court, (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts, "and in respect of the fees of his adversary's revenue-agent appearing, pleading, or acting under section 10."†

The Chief Controlling Revenue Authority shall, from time to time, fix and regulate the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakíl, attorney, mukhtár, or revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette. Exception as to agents mentioned in section 20. Nothing in this section applies to the agents mentioned in the proviso to section 20.

28. No agreement entered into by any pleader, mukhtár, or revenue-agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such pleader, mukhtár, or revenue-agent, shall be valid, unless it is made in writing, signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court, or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

29. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable.

* The words quoted have been inserted by Act IX. of 1884, s. 5.

† The words quoted have been added by Act IX. of 1884, s. 6.

thereunder or order it to be cancelled, and the costs, fees, charges, and disbursements in respect of the business done to be ascertained in the same manner as if no such agreement had been made.

30. Such an agreement shall exclude any further claim of the pleader, mukhtár, or revenue-agent beyond the terms of the agreement to exclude further claims. agreement with respect to any services, fees, charges, or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement.

31. A provision in any such agreement that the pleader, mukhtár or revenue-agent, shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such pleader, mukhtár, or revenue-agent, shall be wholly void.

CHAPTER VII.

PENALTIES.

32. Any person who practises in any Court or revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail, for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, mukhtár, or revenue-agent whilst he has been contravening the provisions of either of such sections.

33. Any pleader, mukhtár, or revenue-agent failing to deliver up his certificate as required by section 26, shall be liable, by order of the Court, Authority, or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

34. Any pleader, mukhtár, or revenue-agent, who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtár, or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

35. Every order under section 32, 33, or 34, shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue Authority where the order has been passed by an officer subordinate to such Authority.

Penalty for receiving or giving commission.

36. Whoever commits any of the following offences :—

(a) solicits or receives from any legal practitioner any gratification in consideration of procuring or having procured his employment in any legal business ;

(b) retains any gratification out of remuneration paid or delivered, or agreed to be paid or delivered, to any legal practitioner for such employment ;

(c) being a legal practitioner, tenders, gives, or consents to the retention of any gratification for procuring or having procured the employment in any legal business of himself or any other legal practitioner,

shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

MISCELLANEOUS.

37. To facilitate the ascertainment of the qualifications mentioned in 'Local Government to sections 6 and 17 respectively, the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

38. Except as provided by sections 4, 5, 16, 27, 32, and 36, nothing in this Act applies to advocates, vakils, and attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to mukhtars practising in such Court, or to advocates enrolled "under section 41 of this Act."*

39. When any person who holds a certificate as a mukhtar under section 7, and a certificate as a revenue-agent under section 18, is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

40. Notwithstanding anything hereinbefore contained, no pleader, mukhtar, or revenue-agent, shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

41. (1) A High Court not established by Royal Charter may, from Power for certain High Courts to enrol advocates. time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

* The words quoted have been substituted for the words, "by the Chief Court of the Panjab," by Act IX. of 1884, s. 7.

(3) The High Court may dismiss any advocate so enrolled, or suspend him from practice.

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Panjáb, unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.*

42. Act I. of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX. of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.†

* This section has been substituted by Act IX. of 1884, s. 8, for the one originally enacted.
† This section has been added by Act IX. of 1884, s. 9.

FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and date of Enactments.	Title.	Extent of repeal.
Act XX. of 1865 ...	To amend the law relating to Pleaders and Mukhtárs.	The whole.
Act XXIX. of 1865 ...	To amend the Pleaders, Mukhtárs, and Revenue agents Act, 1865.	So much as has not been repealed.
Act IX. of 1866 ...	To extend to the Sadr Court of the North-Western Provinces certain provisions of the Pleaders, Mukhtárs, and Revenue-agents Act, 1865, and of Act No. XXIX. of 1865.	The whole.
Act IV. of 1876 ...	To authorize Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII. of 1877 ...	The Panjáb Courts Act, 1877.	Sections 42, 43, 44, and 45.

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25.)

I.

For a certificate authorizing the holder to practise as a pleader—

- (a) In the High Court and any subordinate Court—rupees fifty :
- (b) In any Court of Small Causes in a Presidency-town—rupees twenty-five :
- (c) In all other subordinate Courts—rupees twenty-five :
- (d) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildárs, in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—rupees fifteen :
- (e) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorizing the holder to practise as a mukhtár—

- (f) In the High Court and any subordinate Court—rupees twenty-five :
- (g) In any Court of Small Causes in a Presidency-town—rupees fifteen :
- (h) In all other subordinate Courts—rupees fifteen :
- (i) In the Courts of Subordinate Judges Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildárs, in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—rupees ten :
- (j) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorizing the holder to practise as a revenue-agent—

- (k) In the office of the Chief Controlling Revenue Authority and in any Revenue-office subordinate to such Authority—rupees fifteen :
- (l) In the office of a Commissioner and in any Revenue-office subordinate to a Commissioner—rupees ten :
- (m.) In the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five.

THE PROBATE AND ADMINISTRATION ACT, NO. V. OF 1881.

RECEIVED THE G.-G.'s ASSENT ON THE 21ST JANUARY 1881.

*An Act to provide for the grant of Probates of Wills and Letters of
Administration to the estates of certain deceased persons.*

WHEREAS it is expedient to provide for the grant of probate of wills
and letters of administration to the estates of
deceased persons in cases to which the Indian
Preamble. Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Probate and Administration Act, 1881;"

Local extent.

It applies to the whole of British India;

Commencement.

and it shall come into force on the first day of April, 1881.

2. Chapters II. to XIII., both inclusive, of this Act, shall apply in the case of every Hindú, Muhammadan, Buddhist, and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on, or after the said first day of April, 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras, and Bombay, and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor-General in Council, by a notification in the official Gazette, authorized it so to do.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—
"province" includes any division of British India having a Court of the last resort:

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and

"District Judge" means the Judge of a principal Civil Court of original jurisdiction.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

6. Probate can be granted only to an executor appointed by the will.

Probate only to appointed executor.

7. The appointment may be express or by necessary implication.

Appointment express or implied.

Illustrations.

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in law, C, and adds, "but should the within-named C be not living. I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates" The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or when the executor dies after having proved the will, but before he has administered all the estate of the deceased, an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right, to administration with the will annexed as such residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(a.)—*Grants limited in Duration.*

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of copy or draft of lost will.

25. When the will has been lost or destroyed, and no copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

26. When the will is in the possession of a person, residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration until will produced of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b.)—Grants for the Use and Benefit of Others having Right.

28. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

30. When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such

person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

(c.)—*For Special Purposes.*

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

where the executor is, at the time of the death of such person, resident out of the province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d.)—*Grants with Exception.*

42. Whenever the nature of the case requires that an exception be

Probate or administration with will annexed subject to exception

made, probate of a will or letters of administration with the will annexed, shall be granted subject to such exception.

43. Whenever the nature of the case requires that an exception be

Administration with exception.

made, letters of administration shall be granted subject to such exception.

(e.)—*Grants of the Rest.*

44. Whenever a grant, with exception, of probate or letters of adminis-

Probate or administration of rest.

tration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f.)—*Grants of Effects unadministered.*

45. If the executor to whom probate has been granted has died leaving

Grant of effects unadministered.

a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

46. In granting letters of administration of an estate not fully adminis-

Rules as to grants of effects unadministered.

tered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

47. When a limited grant has expired by effluxion of time, or the

Administration when limited, grant expired, and still some part of estate unadministered.

happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. Errors in names and descriptions, or in setting forth the time and

What errors may be rectified by Court.

place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

49. If, after the grant of letters of administration with the will annexed,

Procedure where codicil discovered after grant of administration with will annexed.

a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance ;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(a.) The Court by which the grant was made had no jurisdiction.

(b.) The grant was made without citing parties who ought to have been cited.

(c.) The will of which probate was obtained was forged or revoked.

(d.) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e.) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f.) Since probate was granted, a later will has been discovered.

(g.) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(h.) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

52. The High Court

Power to appoint Delegate of District Judge to deal with non-contentious cases.

cases, within such local limits as it may from time to time prescribe :

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as

District Judge's powers as to grant of probate and administration.

are by law vested in him in relation to any civil suit or proceeding depending in his Court.

54. The District Judge may order any person to produce and bring into

District Judge may order person to produce testamentary papers.

Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to

Proceedings of District Judge's Court in relation to probate and administration.

the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of

the case will admit, by the Code of Civil Procedure.

56. Probate of the

When probate or administration may be granted by District Judge.

will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned,

of the person applying for the same that the testator or intestate, as the case may be, had, at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

57. When the application is made to the Judge of a District in which

Disposal of application made to Judge of District in which deceased had no fixed abode.

the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district,

or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

58. Probate and letters of administration may, upon application for

Probate and letters of administration may be granted by Delegate.

that purpose to any District Delegate, be granted by him in any case in which there is no contention,

if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

59. Probate or letters of administration shall have effect over all the

Conclusiveness of probate or letters of administration.

property, moveable or immoveable, of the deceased throughout the province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

Provided that probates and letters of administration granted by a High

Effect of unlimited probates, &c., granted by certain Courts.

Court established by Royal Charter, or by the Chief Court of the Panjab, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect :—

“ I, *A. B.*, Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the day or 188 the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of *C. D.*, late of , deceased, to *E. F.*, of , and *G. H.*, of , and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India ; and such certificate shall be filed by the Court receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five, and twenty-six, a copy, draft, or statement of the contents thereof annexed, and stating

the time of the testator's death,
that the writing annexed is his last will and testament, or as the case may be,
that it was duly executed,
the amount of assets which are likely to come to the petitioner's hands ;
and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,
when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

63. In cases wherein the will, copy, or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will, copy, or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

Verification of translation by person other than Court translator.

“ I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

64. Application for letters of administration shall be made by petitioner distinctly written as aforesaid, and stating

the time and place of the deceased's death,
the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,
the amount of assets which are likely to come to the petitioner's hands.
In addition to these particulars the petition shall further state,
when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

65. Every person applying to any of the Courts mentioned in the Additional statements in proviso to section fifty-nine for probate of a will petition for probate, &c. or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, Petition for probate or administration to be signed and verified. if any, and shall be verified by the petitioner in the following manner or to the like effect :—

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also Verification of petition for probate by one witness to will. be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :—

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (*as the case may be*) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment Punishment for false averment in petition or declaration. according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person, 69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and require further evidence, to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

70. Caveats against the grant of probate or letters of administration
 Caveats against grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect :—

"Let nothing be done in the matter of the estate of *A. B.*, late of deceased, who died on the _____ day of _____ at _____, without notice to *C. D.* of _____."

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. In every case in which there is contention, or the District Delegate

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that probate

Grant of probate to be under seal of Court.

of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

“I, _____, Judge of the District of _____, [or Delegate appointed

Form of such grant.

for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)],

hereby make known that on the _____ day of _____ in the year _____ the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

“The _____ day of _____ 18 ____.”

77. Whenever it appears to the District Judge or District Delegate

Grant of letters of administration to be under seal of Court

that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the

same under the seal of his Court in manner following:—

“I, _____, Judge of the District of _____, [or Delegate appointed

Form of such grant.

for granting probate or letters of administration (here insert the limits of the Delegate's jurisdiction)],

hereby make known that on the _____ day of _____ letters of administration (with or without the will annexed, as the case may be) of the property and credits of _____, late of _____, deceased, were granted to _____, the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

“The _____ day of _____ 18 ____.”

78. Every person to whom any grant of letters of administration is

Administration-bond.

committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge, from time to time by any general or special order, directs.

79. The Court may, on application made by petition, and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(a.) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(b.) The executor, in the exercise of his discretion, mortgages a part of the immovable estate of the deceased with the consent of the Court. The mortgage is valid.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Powers of several executors or administrators exercisable by one.

Illustrations.

- (a) One of several executors has power to release a debt due to the deceased.
- (b) One has power to surrender a lease.
- (c) One has power to sell the property of the deceased, moveable or immoveable.
- (d.) One has power to assent to a legacy.
- (e.) One has power to endorse a promissory note payable to the deceased.
- (f.) The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

Powers of administrator during minority

95. An administrator during minority has all the powers of an ordinary administrator.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executor or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration, shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

Inventory to include property in any part of British India.

And the value of such property situate in each province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan, or domestic servant, are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

Save as aforesaid, all debts to be paid equally and rateably.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted,

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a.) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b.) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(a.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b.) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c.) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d.) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e.) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a) A bequeaths to B his lands of Sultānpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is

Assent of executor to his own legacy. necessary to complete his title to it, in the same way as it is required when the bequest is to

another person and his assent may in like manner be express or implied.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a.) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b.) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made ;

Date of successive payments when first payment directed to be made within given time, or on day certain.

Apportionment where annuitant dies between times of payment.

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall, at the end of the year, be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate

123. Where an annuity is given, and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities

Investment of residue bequeathed for life, with direction to invest in specified securities

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit ;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive

Interest payable until investment.

interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the found as shall not yet have been so invested.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government-securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(a.) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1.) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

Interest when time fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

No interest on arrears of annuity within first year after testator's death.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

137. When the time prescribed by the will for the performance of a condition has elapsed without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this

Refund when legacy becomes due on performance of condition within further time allowed.

section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution ;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent ; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

Illustrations.

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII., IX., X., and XII. of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

Saving clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled ; or

(d) affect the rights, duties, and privileges of the Administrator-General of Bengal, Madras, or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist, or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

151. In Act No. XXVII. of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed.

Repeal of portions of Act XXVII. of 1860.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII. of 1860, or Bombay Regulation No. VIII. of 1827 ; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding :

Grant of probate or administration to supersede certificate under Act XXVII. of 1860, or Bombay Regulation, VIII. of 1827.

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, Schedule I., Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely :—

Amendment of Court-fees Act.

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate, or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

Amendment of Hindú Wills Act.

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely) :—

(a.) For the portion of section two commencing with the words, "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(b.) The third clause of section three and the last clause of section six shall be repealed.

(c.) In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan, or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which,

Validation of grants of probate and administration made in British Burma.

before this Act comes into force, have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877, No. 1877. Amendment of Act XV. of 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

THE NEGOTIABLE INSTRUMENTS ACT,

NO. XXVI. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH DECEMBER 1881.

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange, and Cheques.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange, and cheques ; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Negotiable Instruments Act, 1881 "
- It extends to the whole of British India ; but nothing herein contained affects the Indian Paper Currency Act, 1871, section 21, or affects any local usage relating to any instrument in an oriental language : Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act ; and it shall come into force on the first day of March, 1882.
2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.
3. In this Act—
"Banker" includes also persons or a corporation or company acting as bankers ; and
"Notary public" includes also any person appointed by the Governor-General in Council to perform the functions of a notary public under this Act.

Short title.

Local extent.

Saving of usages relating to hundis, &c

body of the instrument,

Commencement.

Repeal of enactments.

Interpretation-clause.

"Banker ;"

"Notary public"

"Notary public."

CHAPTER II.

OF NOTES, BILLS, AND CHEQUES.

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms :—

- (a) "I promise to pay B or order Rs. 500."
- (b) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand for value received."
- (c) "Mr. B, I O U Rs. 1,000."
- (d) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
- (e) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."
- (f) "I promise to pay B Rs. 500 seven days after my marriage with C."
- (g) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."
- (h) "I promise to pay B Rs. 500, and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g), and (h) are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional," within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given, or that payment is to be made, may be a "certain person" within the meaning of this section and section four, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Payee."

8. The "holder" of a promissory note, bill of exchange, or cheque, means any person entitled in his own name to the possession thereof and to receive or recover the amount

"Holder."

due thereon from the parties thereto.

Where the note, bill, or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of

"Holder in due course."

exchange, or cheque if payable to bearer,

or the payee or indorsee thereof, if payable to, or to the order of, a payee, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the

"Payment in due course." apparent tenor of the instrument in good faith and

thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange, or cheque drawn or made in

Inland instrument.

British India, and made payable in, or drawn upon any person resident in, British India, shall be

deemed to be an inland instrument.

Foreign instrument.

12. Any such instrument not so drawn made or made payable shall be deemed to be a foreign instrument.

13. A "negotiable instrument" means a promissory note, bill of ex-

"Negotiable instrument."

change, or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer

thereof.

14. When a promissory note, bill of exchange, or cheque is transferred

Negotiation.

to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

15. When the maker or holder of a negotiable instrument signs the same,

Indorsement.

otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip

of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

16. If the indorser signs his name only, the indorsement is said to be

Indorsement "in blank" and "in full."

"in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and

"Indorsee."

the person so specified is called the "indorsee" of the instrument.

17. Where an instrument may be construed either as a promissory note

Ambiguous instruments.

or bill of exchange, the holder may, at his election, treat it as either, and the instrument shall be

thenceforward treated accordingly.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Where amount is stated differently in figures and words.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima-facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"Maturity."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

Days of grace.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight, and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Calculating maturity of bill or note payable many month after date or sight.

Illustrations.

(a.) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b.) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(c.) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business-day.

Explanation.—The expression “public holiday” includes Sundays: New-Year’s day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS, AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery, and negotiation of a promissory note, bill of exchange, or cheque.

Minor.

A minor may draw, indorse, deliver, and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse, or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

A General authority to transact business, and to receive and discharge debts, does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to endorse.

28. An agent who signs his name to a promissory note, bill of exchange, or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of agent signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange, or cheque, is liable personally thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of legal representative signing.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour, has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor, are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer, or acceptor, as the case may be.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C, and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor, and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's liability. remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustrations.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

- First indorsement, "B "
- Second indorsement, "Peter Williams."
- Third indorsement, "Wright & Co "
- Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario, and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

42. An acceptor of a bill of exchange drawn in a fictitious name, and payable to the drawer's order, is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer

43. A negotiable instrument made, drawn, accepted, indorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted, or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse, or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange, or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange, or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange, or cheque, though partial failure of consideration not consisting of money. not consisting of money, is as certainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

CHAPTER IV.

OF NEGOTIATION.

46. The making, acceptance, or indorsement of a promissory note, bill of exchange, or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting, or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange, or cheque payable to bearer, is negotiable by the delivery thereof.

A promissory note, bill of exchange, or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange, or cheque payable to bearer, is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange, or cheque delivered on condition that it is not to take effect except in a certain event, is not negotiable (except in the hands of a holder for value without notice of the condition), unless such event happens.

Illustrations.

(a.) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b.) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange, or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

- (a.) "Pay the contents to C only."
- (b.) "Pay C for my use"
- (c.) "Pay C or order for the account of B."
- (d.) "The within must be credited to C"

These indorsements exclude the right of further negotiation by C.

- (e.) "Pay C."
- (f.) "Pay C value in account with the Oriental Bank."
- (g.) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee, or indorsee, or all of several joint makers, drawers, payees, or indorsees, of a negotiable instrument, may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section fifty, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability, and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

- (a.) The indorser of a negotiable instrument signs his name, adding the word—"Without recourse."

Upon this indorsement he incurs no liability.

- (b.) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof, even although originally payable to order.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title from such person.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot, by delivery only, negotiate instrument indorsed by deceased

57. The legal representative of a deceased person cannot negotiate, by delivery only, a promissory note, bill of exchange, or cheque payable to order, and indorsed by the deceased but not delivered.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor, or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor, or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn, or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee, or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee, or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place of presentment for acceptance is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

62. A promissory note, payable at a certain period after sight, must, be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time, after it is made and in business hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive, of public holidays) to consider whether he will accept it.

64. Promissory notes, bills of exchange, and cheques, must be presented for payment to the maker, acceptor, or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Exception — Where a promissory note is payable on demand, and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's within banking hours.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

68. A promissory note, bill of exchange, or cheque, made, drawn, or accepted payable at a specified place, and not elsewhere, must, in order to charge any party thereto, be presented for payment at that place.

69. A promissory note or bill of exchange made, drawn, or accepted payable at a specified place, must, in order to charge the maker or drawer thereof, be presented for payment at that place.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee, or acceptor thereof, as the case may be.

71. If the maker, drawee, or acceptor of a negotiable instrument, has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker, or acceptor, as the case may be, or, where the drawee, maker, or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment in any of the following cases:—

(a) if the maker, drawee, or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business-day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot, after due search, be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part-payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with, or delivers back such bill as to cause loss to the holder, he must compensate the holder, for such loss.

CHAPTER VI. OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (c), payment of the amount due on a promissory note, bill of exchange, or cheque, must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or, until such date after the institution of a suit to recover such amount as the Court directs.

Explanation — When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange, or cheque, is, before payment, entitled to have it shown, and is, on payment, entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS, AND CHEQUES.

82. The maker, acceptor, or indorser, respectively, of a negotiable instrument, is discharged from liability thereon—

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

(b) to a holder thereof who otherwise discharges such maker, acceptor, or indorser, and to all parties deriving title under such holder after notice of such discharge;

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor, or indorser makes payment in due course of the amount due thereon.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

When cheque not duly presented and drawer damaged thereby.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Cheque payable to order.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Parties not consenting discharged by qualified or limited acceptance

Explanation.—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;

(b) where it undertakes the payment of part only of the sum ordered to be paid ;

(c) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere ; or where, a place of payment being specified in the order, it undertakes the payment at some other place, and not otherwise or elsewhere ;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration, and does not consent thereto, unless it was made in order to carry out the common intention of the original parties ;

Effect of material alteration.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by indorsee.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six, and one hundred and twenty-five.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Acceptor or indorser bound notwithstanding previous alteration.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange, or cheque, has been materially altered, but does not appear to have been so altered, or where a cheque is presented for payment which does not, at the time of presentation, appear to be crossed, or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon ; and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange, or cheque, is said to be dishonoured by non-payment, when the maker of the note, acceptor of the bill, or drawee of the cheque, makes default in payment upon being duly required to pay the same.

93. When a promissory note, bill of exchange, or cheque, is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

96. When the instrument is deposited with an agent for presentment the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When party to whom notice given is dead.
When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

- (a) when it is dispensed with by the party entitled thereto ;
- (b) in order to charge the drawer, when he has countermanded payment ;
- (c) when the party charged could not suffer damage for want of notice ;
- (d) when the party entitled to notice cannot, after due search, be found ;
- or the party bound to give notice is, for any other reason, unable, without any fault of his own, to give it ;
- (e) to charge the drawers, when the acceptor is also a drawer ;
- (f) in the case of a promissory note which is not negotiable ;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason (if any) assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and, on its being refused, may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Protest.
Protest for better security.
Contents of protest.

101. A protest under section one hundred must contain—

- (a) either the instrument itself, on a literal transcript of the instrument and of everything written or printed thereupon ;
- (b) the name of the person for whom and against whom the instrument has been protested ;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public ; the terms of his answer (if any), or a statement that he gave no answer, or that he could not be found ;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal ;

(e) the subscription of the notary public making the protest ;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

102. When a promissory note or bill of exchange is required by law to

Notice of protest.

be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions ; but the notice may be given by notary public who makes the protest.

103. All bills of exchange drawn payable at some other place than the

Protest for non-payment
after dishonour by non-accept-
ance

place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

104. Foreign bills of exchange must be protested for dishonour when

Protest of foreign bills.

such protest is required by the law of the place where they are drawn.

CHAPTER X.

OF REASONABLE TIME.

105. In determining what is a reasonable time for presentment for

Reasonable time.

acceptance or payment, for giving notice of dishonour, and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments ; and, in calculating such time, public holidays shall be excluded.

106. If the holder and the party to whom notice of dishonour is given

Reasonable time of giving
notice of dishonour.

carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

107. A party receiving notice of dishonour, who seeks to enforce his

Reasonable time for trans-
mitting such notice.

right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-

Acceptance for honour.

acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. An acceptor for honour cannot be charged unless the bill has, at its maturity, been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon, and with all expenses properly incurred in making such payment.

115. Where a drawee in case of need is named in a bill of exchange or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange, or cheque, by any party liable to the holder or any indorsee, shall (except

in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules :—

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting, and protesting it ;

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(c) an indorser who, being liable, has paid the amount due on the same, is entitled to the amount so paid, with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

(e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presumptions as to negotiable instruments

118. Until the contrary is proved, the following presumptions shall be made :—

(a) that every negotiable instrument was made or drawn for consideration of consideration ;
was accepted, indorsed, negotiated, or transferred for consideration ;

as to date ;

(b) that every negotiable instrument bearing a date was made or drawn on such date ;

as to time of acceptance ;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity ;

as to time of transfer ;

(d) that every transfer of a negotiable instrument was made before its maturity ;

as to order of indorsements ;

(e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon ;

as to stamp ;

(f) that a lost promissory note, bill of exchange, or cheque, was duly stamped ;

(g) that the holder of a negotiable instrument is a holder in due course ;
that holder is a holder in due course. provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying original validity of instrument.

121. No maker of a promissory note, and no acceptor of a bill of exchange payable to, or to the order of, a specified person, shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying capacity of payee to indorse

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

Estoppel against denying signature or capacity of prior party.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Cheque crossed specially.

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment of cheque crossed specially more than once.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course of the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

131. A banker who has, in good faith, and without negligence, received payment, for a customer, of a cheque crossed generally or specially to himself, shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered, and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange, or cheque, is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange, or cheque, is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour, and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted, or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India,

137. The law of any foreign country regarding promissory notes, bills of exchange, and cheques, shall be presumed to be the same as that of British India, unless and until the contrary is proved.

SCHEDULE

(a.)—STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III., c. 17 ...	An Act for the better payment of Inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8 ...	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(b.)—ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Title.	Extent of repeal.
VI. of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V. of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12, and 13.
XV. of 1874 ...	The Laws Local Extent Act, 1874 ...	The first schedule, so far as relates to Act VI. of 1840 and Act V. of 1866, sections 11, 12, and 13.

THE INDIAN TRUSTS ACT, NO. II. OF 1882.

RECEIVED THE G. G.'s ASSENT ON THE 13TH JANUARY 1882.

An Act to define and amend the law relating to Private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.
Commencement.

1. This Act may be called "The Indian Trusts Act, 1882:" and it shall come into force on the first day of March, 1882.

Local extent.

It extends in the first instance to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Panjáb, the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam; and the Local Government may, from time to time, by notification in the official Gazette, extend it to any other part of British India. But nothing herein contained affects the rules of Muhammadan law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second chapter of this Act applies to trusts created before the said day.

Repeal of enactments.

2 The Statute and Acts mentioned in the schedule hereto annexed shall, to the extent mentioned in the said schedule, be repealed in the territories to which this Act for the time being extends.

Interpretation-clause.

"trusts :"

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner :

the person who reposes or declares the confidence is called the "author of the trust :"
"trustee :"
"beneficiary :"
"trust-property :"
"beneficial interest :"

is his right against the trustee as owner of the trust-property; and the instrument (if any) by which the trust is declared is called the "instrument of trust :"

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust."

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force: a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229; and all expressions used herein, shall be deemed to have the meanings respectively attributed to them by that Act.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4 A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section, the expression "law" includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

Illustrations.

(a.) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(b.) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(c.) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section five, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary

and (d) the trust-property, and (unless the trust is declared by will, or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

Illustrations.

(a.) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of "C. This creates a trust so far as regards A and C.

(b.) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c.) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d.) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(e.) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may create trusts.

7. A trust may be created—

(a) by every person competent to contract, and,

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor ;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary.

It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. Every person capable of holding property may be a beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up with notice of the trust, a claim inconsistent therewith.

Disclaimer by beneficiary.

10. Every person capable of holding property may be a trustee ; but where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

Who may be trustee.

No one bound to accept trust.

No one is bound to accept a trust.

Acceptance of trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

Disclaimer of trust.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(a.) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is itself an acceptance of the trust, and B and C hold the property in trust for D.

(b.) A transfers certain property to B in trust to sell it, and to pay, out of the proceeds, A's debts. B accepts the trust, and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(c.) A bequeaths a lăkh of rupees to B upon certain trusts, and appoints him his executor. B severs the lăkh from the general assets, and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal, or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

Illustrations.

(a.) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(b.) A, a trustee of certain land for X, Y, and Z, is authorized to sell the land to B for a specified sum. X, Y, and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(c.) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent, and B requests A to make the loan. A may refuse to make it.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations.

(a.) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b.) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Illustration.

The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877, the trustee's duty is to cause the instrument to be registered.

14. The trustee must not, for himself or another, set-up or aid any title

Trustee not to set-up title
adverso to beneficiary. to the trust-property adverse to the interest of the beneficiary.

15. A trustee is bound to deal with the trust-property as carefully as a

Care required from trustee. man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction, or deterioration of the trust-property.

Illustrations.

(a.) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(b.) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A, leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c.) A, a trustee of two debts for B, releases one, and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(d.) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale, and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e.) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(f.) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g.) A bequeaths certain monies to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the monies to remain upon the personal security of the new firm.

(h.) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

16. Where the trust is created for the benefit of several persons in

Conversion of perishable succession, and the trust-property is of a wasting property.

nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations.

(a.) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section twenty.

(b.) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

Illustration.

A, a trustee for B, C, and D, is empowered to choose between several specified modes of investing the trust property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C, and D.

18. Where the trust is created for the benefit of several persons in succession, and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

20. Where the trust-property consists of money, and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

(a) in promissory notes, debentures, stock, or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

(b) in bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India;

(c) in stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council;

(d) in debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of a legislature established in British India;

(e) on a first mortgage of immoveable property situate in British India: Provided that the property is not a leasehold for a term of years, and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; or

(f) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may, from time to time, prescribe in this behalf;

Provided that, where there is a person competent to contract, and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e), and (f), shall be made without his consent in writing.

21. Nothing in section twenty shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an

Mortgage of land pledged to Government under Act XXVI. of 1871.

advance under the Land Improvement Act, 1871, or, in case the trust-Deposit in Government money does not exceed three thousand rupees, a Savings Bank. deposit thereof in a Government Savings Bank.

22. Where a trustee directed to sell within a specified time extends Sale by trustee directed to such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension, lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

Illustration.

A bequeaths property to B, directing him, with all convenient speed and within five years, to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases :—

(a) where he has actually received interest :

(b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary :

(c) where the trustee ought to have received interest, but has not done so :

(d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c), and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(e) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(f) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests), at the same rate, or for the nett profits made by such employment.

Illustrations.

(a.) A trustee improperly leaves trust-property outstanding, and it is consequently lost : he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b.) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated, and its market-price falls. B is answerable to C for the lost.

(c.) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section twenty, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d.) The duty of the trustee is to invest trust-money in any of the securities mentioned in section twenty, clause (a), (b), (c), or (d). Instead of so doing, he

retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(e.) The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.

(f.) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g.) Trust-property is invested in one of the securities mentioned in section twenty, clause (a), (b), (c), or (d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h.) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

Non-liability for predecessor's default.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

26. Subject to the provisions of sections thirteen and fifteen, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application:

(b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require:

(c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not, within a reasonable time, take proper steps to protect the beneficiary's interest.

A co-trustee who joins in signing a receipt for trust-property, and proves that he has not received the same, is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Illustration.

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

But as between the trustees themselves, if one be less guilty than another, and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he had received, to make good such loss; and if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

30. Subject to the provisions of the instrument of trust and of sections twenty-three and twenty-six, trustees shall be respectively chargeable only for such moneys, stocks, funds, and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor otherwise for involuntary losses.

OF THE RIGHTS AND POWERS OF TRUSTEES.

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation, or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Where a trustee has, by mistake, made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary, the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice, or direction on any present questions respecting the management or administration of the trust-property, other than questions of detail, difficulty, or importance not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition, and acting upon the opinion, advice, or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions (if any) contained in such instrument, and to the provisions of section seventeen, a trustee may do all acts which are reasonable and proper for the realization, protection, or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

Every trustee in the actual possession or receipt of the rents and profits of land as defined in the Land Improvement Act, 1871, shall, for the purposes of that Act, be deemed to be a landlord in possession.

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy-in the property or any part thereof, at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Where a trustee is directed to sell trust-property or to invest trust-property in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Illustrations.

(a.) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(b.) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

40. A trustee may, at his discretion, call in any trust-property invested in any security, and invest the same on any of the securities mentioned or referred to in section twenty, and from time to time vary any such investments for others of the same nature :

Provided that, where there is a person competent to contract, and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the whole or any part of the income to which he may be entitled in respect of such property ; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section twenty, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen : Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement, or expenses.

Nothing in this section shall be deemed to affect the provision of any local law for the time being in force relating to the persons and property of minors.

42. Any trustees or trustee may give a receipt in writing for any money, securities, or other moveable property payable, transferable, or deliverable to them or him by reason, or in the exercise, of any trust or power ; and, in the absence of fraud, such receipt shall discharge the person paying, transferring, or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to compound, &c. 43. Two or more trustees acting together may, if and as they think fit—

- (a) accept any composition or any security for any debt or for any property claimed;
- (b) allow any time for payment of any debt;
- (c) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust; and,
- (d) for any of those purposes, enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust (if any) a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust (if any), and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

44. When an authority to deal with the trust-property is given to several trustees, and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

46. A trustee who has accepted the trust cannot afterwards renounce it, except (a) with the permission of a principal Civil Court of original jurisdiction, or (b), if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion, is not a delegation within the meaning of this section.

Illustrations.

(a.) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(b.) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(c.) A bequeaths to B fifty houses let at monthly rents in trust to collect to the rents and pay them to C. B may employ a proper person to collect these rents.

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Co-trustees cannot act singly.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Control of discretionary power.

50. In the absence of express direction to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill, and loss of time in executing the trust.

Trustee may not charge for services.

Nothing in this section applies to any Official Trustee, Administrator-General, Public Curator, or person holding a certificate of administration.

51. A trustee may not use or deal with the trust-property, for his own profit or for any other purpose unconnected with the trust.

Trustee may not use trust-property for his own profit.

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee for sale or his agent may not buy.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage, or lease is manifestly for the advantage of the beneficiary.

Trustee may not buy beneficiary's interest without permission.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

Trustee for purchase.

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it to one of themselves, on a mortgage by, or on the personal security of, himself or one of his co-trustees.

Co-trustees may not lend to one of themselves.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Right to rents and profits.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to specific execution.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

Right to transfer of possession.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(a.) Certain Government-securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A, on attaining majority, may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(b.) A bequeaths Rs 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority, and is otherwise competent to contract. B may claim the Rs. 10,000.

(c.) A transfers certain property to B, and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, accounts, &c. the documents of title relating solely to the trust-property, the accounts of the trust-property, and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

58. The beneficiary, if competent to contract, may transfer his interest but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section, shall authorize her to transfer such interest during her marriage.

59. Where no trustees are appointed, or all the trustees die, disclaim, or are discharged, or where, for any other reason, the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation I.—The following are not proper persons within the meaning of this section:—

A person domiciled abroad: an alien enemy: a person having an interest inconsistent with that of the beneficiary: a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(b) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

61. The beneficiary has a right that his trustee shall be compelled to

perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Illustrations.

(a.) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

62. Where a trustee has wrongfully bought trust-property, the bene-

Wrongful purchase by trustee. beneficiary has a right to have the property declared subject to the trust or re-transferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the nett profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, have contracted in good faith with the trustee or purchaser; or

(b) entitles the beneficiary to have the property declared subject to the trust or re-transferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

63. Where trust property comes into the hands of a third person in-

Following trust property—into the hands of third persons; consistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust-property, and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal

representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

Illustrations.

(a.) A, a trustee for B, of Rs 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(b.) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

Saving of rights of certain transferees.

64. Nothing in section sixty-three entitles the beneficiary to any right in respect of property in the hands of—

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or—

(b) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section sixty-three applies to money, currency notes, and negotiable instruments in the hands of a *bonâ fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872, section 108, or the liability of a person to whom a debt or charge is transferred.

65. Where a trustee wrongfully sells or otherwise transfers trust-property, and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

67. If a partner, being a trustee, wrongfully employs trust-property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(a.) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding-up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(b.) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

68. Where one of several beneficiaries—

(a) joins in committing breach of trust, or

(b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not, within a reasonable time, take proper steps to protect the interests of the other beneficiaries, or

(d) has deceived the trustee, and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

69. Every person to whom a beneficiary transfers his interest has the

Rights and liabilities of rights, and is subject to the liabilities, of the beneficiary's transferee. beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

Office how vacated.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Discharge of trustee.

71. A trustee may be discharged from his office only as follows:—

- (a) by the extinction of the trust ;
- (b) by the completion of his duties under the trust ;
- (c) by such means as may be prescribed by the instrument of trust ;
- (d) by appointment under this Act of a new trustee in his place ;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or
- (f) by the Court to which a petition for his discharge is presented under this Act.

72. Notwithstanding the provisions of section eleven, every trustee may

Petition to be discharged apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office ; and if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

73. Whenever any person appointed a trustee disclaims, or any trustee,

Appointment of new trustee on death, &c. either original or substituted, dies, or is, for a continuous period of six months, absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(a) the person nominated for that purpose by the instrument of trust (if any), or

(b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustee or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent, and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Whenever any such vacancy or disqualification occurs, and it is found impracticable to appoint a new trustee under section seventy-three, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wishes of the person (if any) empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust, and (d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

75. Whenever any new trustee is appointed under section seventy-three or section seventy-four, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee as the case may require.

Every new trustee so appointed, and every trustee appointed by a Court either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

76. On the death or discharge of one of several co-trustees, the trust survives, and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

Trust how extinguished.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

77. A trust is extinguished—

- (a) when its purpose is completely fulfilled; or
- (b) when its purpose becomes unlawful; or

(c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise ; or

(d) when the trust, being revocable, is expressly revoked.

Revocation of trust.

78. A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

(a) where all the beneficiaries are competent to contract—by their consent ;

(b) where the trust has been declared by a non testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust ; or

(c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same, and pay, out of the proceeds, the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation not to defeat what trustees have duly done.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created.

80. An obligation in the nature of a trust is created in the following cases.

81. Where the owner of property transfers or bequeaths it, and it cannot

Where it does not appear that transferor intended to dispose of beneficial interest.

be inferred, consistently with the attendant circumstances, that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations.

(a.) A conveys land to B without consideration, and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A

(b.) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A

(c.) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(d.) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

82. Where property is transferred to one person for a consideration paid

Transfer to one for consideration paid by another.

or provided by another person, and it appears that such other person did not intend to pay or

provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect the Code of Civil Procedure, section 317, or Act No. XI. of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), section 36.

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations.

(a.) A conveys certain land to B—

“upon trust,” and no trust is declared; or

“upon trust to be thereafter declared,” and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

“in trust for C,” and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(b.) A transfers Rs. 10,000 in the four per cents. to B. in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(c.) A conveys land to B upon trust to sell it, and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(d.) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

84. Where the owner of property transfers it to another for an illegal purpose, and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

85. Where a testator bequeaths certain property upon trust, and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Where property is bequeathed, and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor subject to repayment by the latter of the consideration actually paid.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person, and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations.

(a.) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(b.) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(c.) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(d.) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(e.) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lākḥ of rupees. A holds the lākḥ for the benefit of the partnership.

(f.) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(g.) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(h.) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

90. Where a tenant for life, co-owner, mortgagee, or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustrations.

(a.) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b.) A village belongs to a Hindú family. A, one of its members, pays nazrána to Government, and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.

(c.) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries, and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations.

(a.) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b.) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

(c.) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

95. The person holding property in accordance with any of the preceding sections of this chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it :

Provided that (a) where he rightfully cultivates the property, or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill, and loss of time in such cultivation or employment ; and (b) where he holds the property by virtue of a contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

96. Nothing contained in this chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

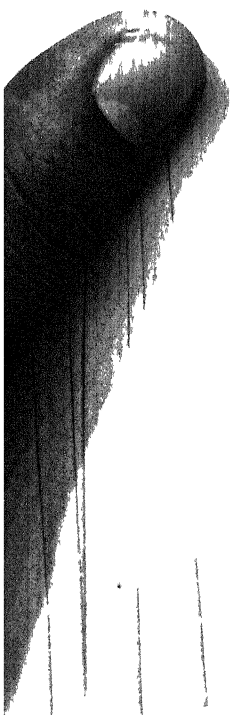
THE SCHEDULE.

STATUTE.

Year and chapter.	Short title.	Extent of repeal.
29 Car. II., c. 3 ...	The Statute of Frauds.	Sections 7, 8, 9, 10, and 11.

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
XXVIII. of 1866 ...	The Trustees' and Mortgagees' Powers Act, 1866.	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36, and 37. In sections 39 and 43 the word "trustee" wherever it occurs ; and in section 43 the words "management or" and "the trust-property or."
1. of 1877 ...	The Specific Relief Act, 1877.	In section 12 the first illustration.



THE TRANSFER OF PROPERTY ACT, NO. IV. OF 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH FEBRUARY 1882.

*An Act to amend the law relating to the Transfer of Property by act
of Parties.*

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Transfer of Property Act, 1882."

Commencement.

It shall come into force on the first day of July, 1882;

Extent.

It extends in the first instance to the whole of British India except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governor of Panjab, and the Chief Commissioner of British Burma

But any of the said Local Government may, from time to time, by notification in the local official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

And any Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local Gazette, exempt, either retrospectively or prospectively, throughout the whole or any part of the territories administered by such Local Government, the members of any race, sect, tribe, or class from all or any of the following provisions, namely, sections forty-one, fifty four, paragraphs two and three, fifty-nine, sixty-nine, one hundred and seven, and one hundred and twenty-three.

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

Saving of certain enactments, incident, rights, liabilities, &c

(a) the provisions of any enactment not hereby expressed repealed :

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force :

(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability : or,

(d) save as provided by section fifty-seven, and chapter four of this Act, any transfer by operation of law, or by, or in execution of, a decree or order of a Court of competent jurisdiction : and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindú, Muhammadan, or Buddhist law.

Interpretation-clause.

"immoveable property:"

"instrument:"

"registered" means registered in British India under the law for the time being in force regulating the registration of documents.

"attached to the earth:"

"attached to the earth" means—
 (a) rooted in the earth, as in the case of trees and shrubs;
 (b) imbedded in the earth, as in the case of walls or buildings; or
 (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

and a person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229.

Enactments relating to contracts to be taken as part of Act IX. of 1872.

4. The chapters and sections of this Act which relate to contracts, shall be taken as part of the Indian Contract Act, 1872.

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A.)—*Transfer of Property, whether moveable or immoveable.*

5. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and "to transfer property" is to perform such act.

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferee.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent, and in the manner, allowed and prescribed by any law for the being in force.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth ;

and, where the property is machinery attached to the earth, the moveable parts thereof ;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith ;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer ;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9 A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him : provided that property may be transferred to or for the benefit of a woman (not being a Hindú, Muhammadan, or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does take effect, because it does not extend to the whole of A's remaining interest in the property.

14. No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections thirteen and fourteen, such interest fails as regards the whole class.

16. Where an interest fails by reason of any of the rules contained in sections thirteen, fourteen, and fifteen, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. The restrictions in sections fourteen, fifteen, and sixteen, shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or

reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

When unborn person acquires vested interest on transfer for his benefit.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Contingent interest.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer to members of a class who attain a particular age.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer contingent on happening of specified uncertain event.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Transfer to such of certain persons as survive at some period not specified.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Conditional transfer.

Illustrations.

(a.) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b.) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c.) A transfers Rs. 500 to B on condition that he shall murder C. The transfer is void.

(d.) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D, and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b.) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D, and E. B marries without the consent of C, D, and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so, to C. B dies in A's lifetime. The disposition in favour of C takes effect.

(b.) A transfers property to his wife; but in case she should die in his lifetime, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition super-added that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections ten, twelve, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-seven.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Fulfilment of condition subsequent.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Subject to the provisions of section twelve, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

Illustrations.

(a.) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b.) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Transfer conditional on performance of act, time being specified.

Election.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject nevertheless,

Election when necessary.

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer, and in all cases where the transfer is for consideration, to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustration.

The farm of Sultānpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must, out of the Rs. 1,000, pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his own capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not, within one year after the date of the transfer, signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends, and other periodical payments in the nature of income, shall, upon the transfer of the interest of the person entitled to

Apportionment of periodical payments on determination of interest of person entitled.

receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. When, in consequence of the transfer, property is divided and held

Apportionment of benefit in several shares, and thereupon the benefit of any of obligation on severance.

obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose.

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it, in manner provided by this section, unless and until he has had reasonable notice in writing.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs.

Illustrations

(a) A sells to B, C, and D a house, the annual rent of which is Rs. 30, and they agree that B shall pay Rs. 10, C shall pay Rs. 10, and D shall pay Rs. 10. B, C, and D each pay Rs. 10 to A, and A pays Rs. 30 to the landlord. B, C, and D are jointly and severally liable to the landlord for the rent of the house.

(b) In the same case, suppose that B, C, and D are engaged to do ten days' labour each on A's land to provide for the cultivation of the land. B, C, and D are jointly and severally liable to A for the ten days' work due on account of the rent of the land. If B, C, and D do more than ten days' work in all, A is not liable to pay them for the extra work.

B.—Transfer of Immoveable Property.

38. Where any person, authorized by and in compliance with the

Transfer by person authorized only under certain circumstances to transfer.

the existence of such circumstances, has acted in good faith between the transferee on the one part and the transferor on the other part, (if any) affected by the transfer on the other part, to be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration

A, a Hindu widow, who has no other means of support, and who is neither religious nor charitable, transfers her property to B, a Hindu, who binds himself by a deed of gift to maintain her. If the property is insufficient for A's maintenance, and that the transferee, after using reasonable care, buys the field from A. As to the field bought from A, and the other fields on the other part, a mortgage to the transferee shall be deemed to have existed.

39. Where a third person has a right to receive maintenance, or a

Transfer where third person is entitled to maintenance. provision for advancement or maintenance from the profits of immoveable property, and the property is transferred with the retention of a debt or charge.

right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous ; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Illustration.

A, a Hindú, transfers Sultánpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultánpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultánpur. She has no claim on the villages transferred to C.

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

where a third person is entitled to the benefit of an obligation arising or of obligation annexed to out of contract and annexed to the ownership of immoveable property, but not amounting to an interest or easement. interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultánpur to B. While the contract is still in force, he sells Sultánpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the owner. ostensible owner of such property, and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it : provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Where a person transfers any immoveable property, reserving Transfer by person having authority to revoke former transfer. power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindú who has separated from his father B, sells to C three fields, X, Y, and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Transfer by one co-owner.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Transfer for consideration by persons having distinct interests.

Illustrations.

(a.) A, owning a moiety, and B and C, each a quarter share, of mauza Sultánpur exchange an eighth share of that mauza for a quarter share of mauza Lálpara. There being no agreement to the contrary, A is entitled to an eighth share in Lálpara, and B and C each to a sixteenth share in that mauza.

(b.) A being entitled to a life-interest in mauza Atrali, and B and C to the reversion, sell the manza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600; the reversion, Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultānpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor-General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated, or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat, or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

“Sale” defined. 54. “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the Rights and liabilities of seller of immoveable property respectively are buyer and seller. subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :

(1.) The seller is bound—

(a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover ;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power ;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto ;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place ;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents ;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits ;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2.) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists, and that he has power to transfer the same :

provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3.) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power :

provided that (a), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (b), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a), the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents, and furnish such true copies thereof or extracts therefrom as he may require ; and in the meantime, the seller, or the buyer of the lot of greatest value as the case may be, shall keep the said documents safe, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident ;

(4.) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer ;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5.) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest ;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs : provided that, where the property is sold free from incumbrances, the buyer may retain out

of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto ;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury, or decrease in value of the property not caused by the seller.

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

6. The buyer is entitled—

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof ;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount ; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

56. Where two properties are subject to a common charge, and one of

Sale of one of two properties subject to a common charge. the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Discharge of Incumbrances on Sale.

57. (a.) Where immoveable property subject to any incumbrance

Provision by Court for incumbrances, and sale freed therefrom. whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application

of any party to the sale, direct or allow payment into Court,

(1) in the case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b.) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks

fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c.) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d.) An appeal shall lie from any declaration, order, or direction under this section as if the same were a decree.

(e.) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. (a.) A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b.) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage, and the mortgagee a simple mortgagee.

Mortgage by conditional sale. (c.) Where the mortgagor ostensibly sells the mortgaged property—
on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or
on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,
the transaction is called a mortgage by conditional sale, and the mortgagee a mortgagee by conditional sale.

(d.) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-

money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage, and the mortgagee an usufructuary mortgagee.

(e.) Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

59. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

Rights and Liabilities of Mortgagor.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

Right of usufructuary mortgagee to recover possession. **62.** In the case of a usufructuary mortgage, the mortgagor has a right to recover possession, of the property—

(a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any) prescribed for the payment of the mortgage-money has expired, and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in Court as hereinafter provided.

63. Where mortgaged property in possession of the mortgagee has, Accession to mortgaged property during the continuance of the mortgage, received property. any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture, or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary, and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set-off against interest, if any, payable on the money so expended.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Implied contracts by mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee.

(a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(d) and, where the mortgaged property is a lease for a term of years that the rent payable under the lease, the conditions contained therein, and

the contracts binding on the lessee, have been paid, performed, and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists, and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein, and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;

(e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will, at the proper time, discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to waste by mortgagor in possession. deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagees.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

(a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

(b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(c) to authorize the mortgagee of a railway, canal, or other work, in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Right to sue for mortgage-money.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only :—

- (a) where the mortgagor binds himself to repay the same :
- (b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor :
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section sixty-six, the mortgagee may require the mortgagor to give him, within a reasonable time, another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases (namely) —

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindú, Muhammadan, or Buddhist ;
- (b) where the mortgagee is the Secretary of State for India in Council ;
- (c) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchi, or Rangoon.

But no such power shall be exercised unless and until—

- (1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service ; or
- (2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised ; but any person damnified by an unauthorized, or improper, or irregular exercise of the power, shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances (if any), to which the sale is not made subject, or after payment into Court under section fifty-seven of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses properly incurred by him as incident to the sale or any attempted sale ; and, secondly, in discharge of the mortgage-money and costs and other money (if any) due under the mortgage ; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections six to nineteen (both inclusive) of the Trustees' and Mortgagees' Powers Act, 1866, shall be deemed

to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindú, Muhammadan, or Buddhist.

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(a.) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b.) A mortgages a certain plot of building land to B, and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

(a) for the due management of the property and the collection of the rents and profits thereof ;

(b) for its preservation from destruction, forfeiture, or sale ;

(c) for supporting the mortgagor's title to the property ;

(d) for making his own title thereto good against the mortgagor ; and,

(e) when the mortgaged property is a renewable leasehold, for the renewal of the lease ;

and may, in the absence of a contract to the contrary, add such money to the principal-money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent. per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property ; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

73. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus (if any) of the proceeds, after payment there-out of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

74. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount ; and (subject to

the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

75. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure, and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Rights of mesne mortgagee against prior and subsequent mortgagees.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property—

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(b) he must use his best endeavours to collect the rents and profits thereof;

(c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government-revenue, all other charges of a public nature accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;

(d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;

(e) he must not commit any act which is destructive or permanently injurious to the property;

(f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(g) he must keep clear, full, and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money, and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus (if any) shall be paid to the mortgagor;

(i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss (if any) occasioned by such failure.

Loss occasioned by his default.

77. Nothing in section seventy-six, clauses (b), (d), (g), and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

78. Where, through the fraud, misrepresentation, or gross neglect of a mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgage shall be postponed to the subsequent mortgagee.

79. If a mortgage, made to secure future advances, the performance of an engagement, or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultānpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultānpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C, gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section seventy-nine, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Marshalling and Contribution.

81. If the owner of two properties mortgages them both to one person, and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section eighty-one to the claim of the second mortgagee.

Deposit in Court.

83. At any time after the principal money has become payable, and before a suit for redemption of the mortgaged money due on mortgage. property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, by mortgagor. on presenting a petition (verified in manner prescribed by law for the verification of complaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

84. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section eighty-three the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender, or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section or in section eighty-three shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

Suits for Foreclosure, Sale, or Redemption.

85. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest in the property Parties to suits for foreclosure, sale, and redemption. comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: Provided that the plaintiff has notice of such interest.

Foreclosure and Sale.

86. In a suit for foreclosure, if the plaintiff succeeds, the Court shall make a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

and ordering that, upon the defendant paying to the plaintiff or into Court the amount so due, on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the plaintiff

shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

87. If payment is made of such amount and of such subsequent costs

Procedure in case of payment of amount due.

as are mentioned in section ninety-four, the defendant shall (if necessary) be put into possession of the mortgaged property.

If such payment is not so made, the plaintiff may apply to the Court

Order absolute for foreclosure.

for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff:

Provided that the Court may, upon good cause shewn, and upon such terms (if any) as it thinks fit, from time to time postpone the day appointed for such payment.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.

In the Code of Civil Procedure, Schedule IV., No. 129, for the words "Final decree," the words "Decree absolute" shall be substituted.

88. In a suit for sale, if the plaintiff succeeds, the Court shall pass a

Decree for sale.

decree to the effect mentioned in the first and second paragraphs of section eighty-six, and also ordering that, in default of the defendant paying as therein mentioned, the mortgaged property, or a sufficient part thereof, be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff, and that the balance (if any) be paid to the defendant or other persons entitled to receive the same.

In a suit for foreclosure, if the plaintiff succeeds, and the mortgage is

Power to decree sale in foreclosure-suit.

not a mortgage by conditional sale, the Court may, at the instance of the plaintiff, or of any person interested either in the mortgage-money or in the right of redemption, if it thinks fit, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum, fixed by the Court to meet the expenses of sale and to secure the performance of the terms.

89. If in any case under section eighty-eight the defendant pays to the

Procedure when defendant pays amount due.

plaintiff or into Court on the day fixed as aforesaid the amount due under the mortgage, the costs (if any) awarded to him and such subsequent costs as are mentioned in section ninety-four, the defendant shall (if necessary) be put in possession of the mortgaged property; but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order

Order absolute for sale.

absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the

sale be dealt with as is mentioned in section eighty-eight; and thereupon the defendant's right to redeem and the security shall both be extinguished.

90. When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, Recovery of balance due on mortgage. if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such sum.

Redemption.

91. Besides the mortgagor, any of the following persons may redeem, Who may sue for redemption. or institute a suit for redemption of, the mortgaged property:—

(a) any person (other than the mortgagee of the interest sought to be redeemed) having any interest in or charge upon the property;

(b) any person having any interest in, or charge upon, the right to redeem the property;

(c) any surety for the payment of the mortgage-debt or any part thereof;

(d) the guardian of the property of a minor mortgagor on behalf of such minor;

(e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

(f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;

(g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

92. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree ordering—

that an account be taken of what will be due to the defendant for the mortgage-money and for his costs of the suit (if any) awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree;

that, upon the plaintiff paying to the defendant or into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall re-transfer it to the plaintiff free from the mortgage, and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property, and

that if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

93. If payment is made of such amount and of such subsequent costs In case of redemption, possession. as are mentioned in section ninety-four, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

If such payment is not so made the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

If he applies for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he applies for the latter order, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall, as regards the property affected by the order, both be extinguished :

Provided that the Court may, upon good cause shown, and upon such terms (if any) as it think fit, from time to time, postpone the day fixed under section ninety-two for payment to the defendant.

94. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption, or sale up to the time of actual payment.

95. Where one of several mortgagors redeems the mortgaged property, and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession.

Sale of Property subject to prior Mortgage.

96. If any property the sale of which is directed under this chapter is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Application of proceeds.

97. Such proceeds shall be brought into Court and applied as follows :—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale ;

secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage ;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made ;

fourthly, in payment of the principal money due on account of that mortgage ; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or, if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Nothing in this section or in section ninety-six shall be deemed to affect the powers conferred by section fifty-seven.

Anomalous Mortgages.

98. In the case of a mortgage, not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, or an English mortgage, or a combination of the first and third, or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

Mortgage not described in section 58, clauses (b), (c), (d), and (e).

Attachment of Mortgaged Property.

99. Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section sixty-seven, and he may institute such suit notwithstanding anything contained in the Code of Civil Procedure, section 43.

Charges.

100. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections eighty-one and eighty-two and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

101. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Extinguishment of charges.

Notice and Tender.

102. Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount,

103. Where, under the provisions of this chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served, or tender or deposit made, accepted, or taken by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Chapter XXXI. of the Code of Civil Procedure shall, so far as may be, apply to such application, and to the parties thereto, and to the guardian appointed thereunder.

104. The High Court may, from time to time, make rules consistent with this Act for carrying out in itself, and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this chapter.

Power to make rules.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service, or other thing to be so rendered, is called the rent.

Lessor, lessee, premium, and rent defined.

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument

Leases how made.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

108. In the absence of a contract or local usage to the contrary, the Rights and liabilities of lessor and the lessee of immoveable property, as lessor and lessee. against one another respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased :—

A.—Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, or which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(b) the lessor is bound on the lessee's request to put him in possession of the property :

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease, and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to, and go with, the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

B.—Rights and Liabilities of the Lessee.

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(e) if by fire, tempest, or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :

(h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth ; provided he leaves the property in the state in which he received it :

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of

which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee :

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest :

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof, and give or leave notice of any defect in such condition ; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left :

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give with reasonable diligence, notice thereof to the lessor :

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own : but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto :

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes :

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfers the property leased, or any part thereof, or

any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it ; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him :

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee, and the lessee, may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Where the time limited by a lease of immoveable property is

expressed as commencing from a particular day, in exclusion of day on which term commences, computing that time such day shall be excluded.

Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. A lease of immoveable property determines—

- (a) by efflux of the time limited thereby :
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event :
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event :
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right :
- (e) by express surrender ; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them :
- (f) by implied surrender :
- (g) by forfeiture ; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void ; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself ; and in either case the lessor or his transferee does some act showing his intention to determine the lease :
- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section one hundred and eleven, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting :

Provided that the lessor is aware that the forfeiture has been incurred :

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section one hundred and eleven, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations.

(a.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section one hundred and fourteen.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section one hundred and six.

Illustrations.

(a.) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b.) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification published in the local official Gazette, declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law (if any) for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

120. Save as otherwise provided in this chapter, each party has the rights and liabilities of rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Exchange of money.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII.

OF GIFTS.

122. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

"Gift" defined.

Acceptance when to be made. Such acceptance must be made during the life-time of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

123. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Gift of existing and future property.

124. A gift comprising both existing and future property is void as to the latter.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(a.) A gives a field to B reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b.) A gives a lākh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract, and accepting property burdened by onerous gift to disqualified person. any obligation, is not bound by his acceptance. But if, after becoming competent to contract, and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations.

(a.) A has shares in X, a prosperous joint-stock company, and also shares in Y, a joint-stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint-stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b.) A, having a lease from a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

128. Subject to the provisions of section one hundred and twenty-seven, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

129. Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section one hundred and twenty-three, any rule of Hindú or Buddhist law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

130. A claim which the Civil Courts recognise as affording grounds for relief is actionable whether a suit for its enforcement is or is not actually pending or likely to become necessary.

131. No transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer is given to him, unless he is a party to or otherwise aware of such transfer; and every dealing by such debtor or person, not being a party to or otherwise aware of, and not having received express notice of, a transfer, with the debt or property, shall be valid as against such transfer.

Illustration.

A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice, of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

132. Every such notice must be in writing signed by the person making

Notice to be in writing the transfer, or by his agent duly authorized in signed. this behalf.

133. On receiving such notice, the debtor or person in whom the pro-

Debtor to give effect to party is vested shall give effect to the transfer, transfer. unless where the debtor resides, or the property is situate, in a foreign country, and the title of the person in whose favour the transfer is made is not complete according to the law of such country.

134. Where the transferor of a debt warrants the solvency of the

Warranty of solvency of debtor, the warranty, in the absence of a contract debtor. to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

135. Where an actionable claim is sold, he against whom it is made is

Discharge of person against wholly discharged by paying to the buyer the price whom claim is sold. and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Nothing in the former part of this section applies—

(a) where the sale is made to the co-heir to, or co-proprietor of, the claim sold ;

(b) where it is made to a creditor in payment of what is due to him ;

(c) where it is made to the possessor of a property subject to the actionable claim ;

(d) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence, and is ready for judgment.

136. No Judge, pleader, mukhtár, clerk, bailiff, or other officer connected

Incapacity of officers connected with Courts of justice. with Courts of justice, can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.

137. The person to whom a debt or charge is transferred shall take it

Liability of transferee of debt. subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

Illustration.

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

138. When a debt is transferred for the purpose of securing an existing

Mortgaged debt. or future debt, the debt so transferred, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery ; secondly, in or towards satisfaction of the amount for the time being secured by the transfer ; and the residue (if any) belongs to the transferor.

Saving of negotiable instruments.

139. Nothing in this chapter applies to negotiable instruments.

THE SCHEDULE—(a.) STATUTES.

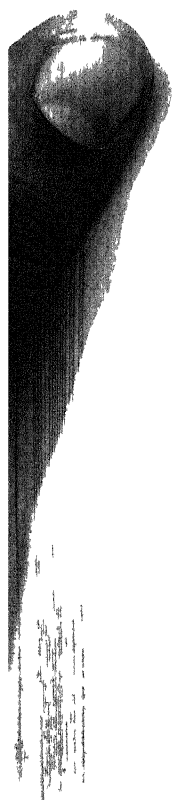
Year and chapter.	Subject.	Extent of repeal.
27 Hen. VIII., c. 10...	Uses	The whole.
13 Eliz., c. 5 ...	Fraudulent conveyances ...	The whole.
27 Eliz., c. 4 ...	Fraudulent conveyances ...	The whole.
4 Wm. & Mary, c. 16.	Claudestine mortgages ...	The whole.

(b.) ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IX. of 1842 ...	Lease and release	The whole.
XXXI. of 1854 ...	Modes of conveying land ...	Section 17.
XI. of 1855 ...	Mesne profits and improvement	Section 1 ; in the title, the words "to mesne profits and" and in the preamble "to limit the liability for mesne profits and."
XXVII. of 1866 ...	Indian Trustee Act ...	Section 31.
IV. of 1872 ...	Pánjab Laws Act ...	So far as it relates to Bengal Regulations I. of 1798 and XVII. of 1806.
XX. of 1875 ...	Central Provinces Laws Act.	So far as it relates to Bengal Regulations I. of 1798 and XVII. of 1806.
XVIII. of 1876 ...	Oudh Laws Act ...	So far as it relates to Bengal Regulation XVII. of 1806.
I. of 1877 ...	Specific Relief ...	In sections 35 and 36, the words "in writing."

(c.) REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I. of 1798.	Conditional sales ...	The whole Regulation.
Bengal Regulation XVII. of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V. of 1827.	Acknowledgment of debts : Interest : Mortgagees in possession.	Section 15.



THE INDIAN EASEMENTS ACT,

NO. V. OF 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH FEBRUARY 1882.

An Act to define and amend the law relating to Easements and Licenses.

WHEREAS it is expedient to define and amend the law relating to Easements and Licenses; It is hereby enacted as follows:—

Preamble.

PRELIMINARY.

Short title

1. This Act may be called "The Indian Easements Act, 1882."

Local extent.

It extends to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg;

Commencement.

and it shall come into force on the first day of July, 1882.

2. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from—

(a) any right of the Government to regulate the collection, retention, and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained, or distributed in or by any channel or other work constructed at the public expense for irrigation;

(b) any customary or other right (not being a license) in or over immoveable property which the Government, the public, or any person may possess irrespective of other immoveable property; or

(c) any right acquired, or arising out of a relation created, before this Act comes into force.

3. Sections 26 and 27 of the Indian Limitation Act, 1877, and the Repeal of Act XV. of 1877, definition of "easement," contained in that Act, sections 26 and 27, are repealed in the territories to which this Act extends. All references in any Act or Regulation to the said sections, or to sections 27 and 28 of Act No. IX. of 1871, shall, in such territories, be read as made to sections fifteen and sixteen of this Act.

CHAPTER I.—OF EASEMENTS GENERALLY.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression “land” includes also things permanently attached to the earth; the expression “beneficial enjoyment” includes also possible convenience, remote advantage, and even a mere amenity; and the expression “to do something” includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

Illustrations.

(a.) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b.) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(c.) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(d.) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers, and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(e.) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(f.) A is bound to cleanse a watercourse running through his land, and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Continuous and discontinuous, apparent and non-apparent, easements.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(a.) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(b.) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(c.) Rights annexed to A's land to lead water thither across B's land by an aqueduct, and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(d.) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights.

7. Easements are restrictions of one or other of the following rights (namely):—

(a) The exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

(b) The right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Exclusive right to enjoy.
Rights to advantages arising from situation.

Illustrations of the Rights above referred to.

(a.) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b.) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c.) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(d.) The right of every owner of land to so much light and air as pass vertically thereto.

(e.) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

Explanation—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the “subjacent and adjacent soil” mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(f.) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over, or through his land, shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g.) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel, and all water on its surface which does not pass in a defined channel.

(h.) The right of every owner of land that the water of every natural stream which passes by, through, or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force, or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i.) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(j.) The right of every owner of land abutting on a natural stream, lake, or pond to use and consume its water for drinking, household purposes, and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

CHAPTER II.

THE IMPOSITION, ACQUISITION, AND TRANSFER OF EASEMENTS.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Who may impose easements.

Illustrations.

(a.) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(b.) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(c.) A, B, and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(d.) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

9. Subject to the provisions of section eight, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Servient owners.

Illustrations.

(a.) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that A's supply is not thereby diminished.

(b.) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right of way is not thereby obstructed.

10. Subject to the provisions of section eight, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Lessor and mortgagor.

Explanation.—A security is insufficient within the meaning of the section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

Lessee.

12. An easement may be acquired by the owner of the immovable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same.

Who may acquire easements.

One of two or more co-owners of immoveable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immoveable property can acquire, for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease.

Easements of necessity and quasi easements.

13. Where one person transfers or bequeaths immoveable property to another,—

(a) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) if such an easement is apparent and continuous, and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(d) if such an easement is apparent and continuous, and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement; or

(f) if such an easement is apparent and continuous, and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c), and (e) are called easements of necessity.

Where immoveable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(a.) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b.) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale used for agricultural purposes only, and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(c.) A sells B a house with windows overlooking A's land, which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d.) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(e.) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f.) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(g.) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h.) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i.) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j.) A, the owner of two adjoining buildings, sells one to B, and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(k.) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(l.) Under the Land Acquisition Act, 1870, a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(m.) Owing to partition of joint property, A becomes the owner of an upper room in a building, and becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(n.) A let a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

14. When right to a way of necessity is created under section thirteen, Direction of way of necessity. the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

15. Where the access and use of light or air, to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and twenty years, Acquisition by prescription. and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support, or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if, for the words "twenty years," the words "sixty years," were substituted.

Illustrations.

(a.) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(b.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof, and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(c.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right, and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

16. Provided that, when any land upon, over, or from which any ease-

Exclusion in favour of reversioner of servient heritage. ment has been enjoyed or derived, has been held under or by virtue of any interest for life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C had a life-interest in the land; and that on C's death B became entitled to the land; and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Rights which cannot be acquired by prescription.

17. Easements acquired under section fifteen are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired :—

(a) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed ;

(b) a right to the free passage of light or air to an open space of ground ;

(c) a right to surface-water not flowing in a stream, and not permanently collected in a pool, tank, or otherwise ;

(d) a right to underground water not passing in a defined channel.

Customary easements.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(a.) By the custom of a certain village every cultivator of village-land is entitled, as such, to graze his cattle on the common pasture. A having become the tenant of a plot of uncultivated land in the village breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(b.) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

19. Where the dominant heritage is transferred or devolves, by act of parties, or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Illustration.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree (if any) by which the easement referred to was imposed.

And when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(a.) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(b.) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors, and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and when the exercise of an easement can, without detriment to the dominant owner, be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Exercise of easement.

to the dominant owner,

Confinement of exercise of easement.

Illustrations.

(a.) A has a right of way over B's field. A must enter the way at either end, and not at any intermediate point.

(b.) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

23. Subject to the provisions of section twenty-two, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(a.) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water.

(b.) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(c.) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature, of the pollution.

(d.) A, a riparian owner, acquires, as against the lower riparian owners, a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

24. The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(a.) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(b) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain, to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(c) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(d.) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(e.) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(f.) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(g) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

25. The expenses incurred in constructing works, or making repairs, or

Liability for expenses necessary for preservation of easement.

doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

26. Where an easement is enjoyed by means of an artificial work, the

Liability for damage from want of repair.

dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

27. The servient owner is not bound to do anything for the benefit of

Servient owner not bound to do anything.

the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement: but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Illustrations.

(a.) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound as servient owner to clear the watercourse or scour the sewer.

(b.) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(c.) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(d.) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(e.) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

Extent of easements.

Easement of necessity.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired.

Other easements.

In the absence of evidence as to such intention and purpose—

Right of way.

(a) a right of way of any one kind does not include a right of way of any other kind :

(b) the extent of a right to the passage of light or air to a certain window, door, or other opening, imposed by a Right to light or air acquired by grant. testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made :

(c) the extent of a prescriptive right to the passage of light or air Prescriptive right to light or air. to a certain window, door, or other opening, is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used :

(d) the extent of a prescriptive right to pollute air or water is the extent Prescriptive right to pollute air and water. of the pollution at the commencement of the period of user on completion of which the right arose : and

(e) the extent of every other prescriptive right and the mode of its Other prescriptive rights. enjoyment must be determined by the accustomed user of the right.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement. Increase of easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(a.) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(b.) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works, and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(c.) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field, and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

30. Where a dominant heritage is divided between two or more persons, Partition of dominant heritage. the easement becomes annexed to each of the shares, but not so as to increase substantially the burden on the servient heritage ; provided that such annexation is consistent with the terms of the instrument, decree, or revenue proceeding (if any) under which the division was made, and in the case of prescriptive rights, with the user during the prescriptive period.

Illustrations.

(a.) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(b.) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(c.) A, having in respect of his house an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

31. In the case of excessive user of an easement the servient owner

Obstruction in case of excessive user.

may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

Right to enjoyment without disturbance.

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

33. The owner of any interest in the dominant heritage, or the occupier

Suit for disturbance of easement.

of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto; provided that the disturbance has actually caused substantial damage to the plaintiff.

Explanation I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section thirty-four.

Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section, unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(a.) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(b.) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until substantial damage is actually sustained.

When cause of action arises for removal or support.

35. Subject to the provisions of the Specific Relief Act, 1877, sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

Injunction to restrain disturbance.

(a) if the easement is actually disturbed,—when compensation for such disturbance might be recovered under this chapter :

(b) if the disturbance is only threatened or intended,—when the act threatened or intended must necessarily, if performed, disturb the easement.

36. Notwithstanding the provisions of section twenty-four, the dominant owner cannot himself abate a wrongful obstruction of an easement.

Abatement of obstruction of easement.

CHAPTER V.

THE EXTINCTION, SUSPENSION, AND REVIVAL OF EASEMENTS.

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Extinction by dissolution of right of servient owner.

Exception.—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section ten.

Illustrations.

(a.) A transfers Sultánpur to B on condition that he does not marry C. B imposes an easement on Sultánpur. Then B marries C. B's interest in Sultánpur ends, and with it the easement is extinguished.

(b.) A, in 1860, let Sultánpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultánpur then ends, and with it C's easement.

(c.) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear, and his interest is sold. B's easement is extinguished.

(d.) A mortgages Sultánpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section ten. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

Extinction by release.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation I.—An easement is impliedly released—

(a) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority ;

(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations.

(a.) A, B, and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(b.) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(c.) A, having the right to discharge his eaves-droppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(d.) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently.

The easement is impliedly released.

(e.) A, having a projecting roof by means of which he enjoys an easement to discharge eaves-droppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel, and discharge it on C's land. The easement is impliedly released.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction by revocation.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

Extinction on expiration of limited period or happening of dissolving condition.

Extinction on termination of necessity.

41. An easement of necessity is extinguished when the necessity comes to an end.

Illustration.

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

Extinction of useless easement.

43. Where, by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased, and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

(a) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used ; or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(c) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

44. An easement is extinguished where the servient heritage is by

Extinction on permanent alteration of servient heritage by superior force. superior force so permanently altered that the dominant owner can no longer enjoy such easement:

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage; and the provisions of section fourteen apply to such way.

Illustrations.

(a.) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently, and runs through C's land. B's easement is extinguished.

(b.) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

Extinction by destruction of either heritage.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Illustration.

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

46. An easement is extinguished when the same person becomes entitled

Extinction by unity of ownership. to the absolute ownership of the whole of the dominant and servient heritages.

Illustrations.

(a.) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field to C. Then C forecloses both mortgages, and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(b.) The dominant owner acquires only part of the servient heritage: the easement is not extinguished, except in the case illustrated in section forty-one.

(c.) The servient owner acquires the dominant heritage in connection with a third person: the easement is not extinguished.

(d.) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages: the easements are not extinguished.

(e.) The joint owners of the dominant heritage jointly acquire the servient heritage: the easement is extinguished.

(f.) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(g.) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

47. A continuous easement is extinguished when it totally ceases to

Extinction by non-enjoyment. be enjoyed as much for an unbroken period of twenty years.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner.

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(a) where the cessation is in pursuance of a contract between the dominant and servient owners;

(b) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period, or

(c) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustrations.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

Extinction of accessory rights.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section forty-seven. The right of way is also extinguished.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

50. The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of section twenty-six, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Servient owner not entitled to require continuance.

Suspension of easement.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement, and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed.

51. An easement extinguished under section forty-five revives (a) when

Revival of easements.

the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (b) when the destroyed heritage is a servient building, and, before twenty years have expired, such building is rebuilt upon the same site; and (c) when the destroyed heritage is a dominant building, and, before twenty years have expired, such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

An easement extinguished under section forty-six revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section forty-seven.

Illustration.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI.

LICENSES.

52. Where one person grants to another, or to a definite number of

"Licence" defined.

other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

53. A license may be granted by any one in the circumstances and to

Who may grant license.

the extent in and to which he may transfer his interests in the property affected by the license.

54. The grant of a license may be express or implied from the conduct

Grant may be express or implied.

of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Accessory licenses annexed by law.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

License when transferable.

Illustrations.

(a.) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immoveable property of B. The right cannot be transferred.

(b.) The Government grant B a license to erect and use temporary grain sheds, on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein, and remove grain therefrom.

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

Grantor's duty not to render property unsafe.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

Grantor's transferee not bound by license.

License when revocable.

60. A license may be revoked by the grantor, unless—

(a) it is coupled with a transfer of property, and such transfer is in force:

(b) the licensee, acting upon the license, has executed a work of a permanent character, and incurred expenses in the execution.

Revocation express or implied.

61. The revocation of a license may be express or implied

Illustrations.

(a.) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(b.) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

License when deemed revoked.

62. A license is deemed to be revoked—

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license:

(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative;

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled :

(d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right :

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the license :

(f) where the license is granted for a specified purpose, and the purpose is attained, or abandoned, or becomes impracticable :

(g) where the license is granted to the licensee as holding a particular office, employment, or character, and such office, employment, or character ceases to exist :

(h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee :

(i) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby, and to remove any goods which he has been allowed to place on such property.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

THE POWERS OF ATTORNEY ACT, NO. VII. OF 1882.

RECEIVED THE G.-G.'s ASSENT ON THE 24TH FEBRUARY 1882.

An Act to amend the law relating to Powers-of-Attorney.

FOR the purpose of amending the law relating to Powers-of-Attorney ;
It is hereby enacted as follows ;—

Short title.	1. This Act may be called "The Powers-of-Attorney Act, 1882."
Local extent.	It applies to the whole of British India ;
Commencement.	and it shall come into force on the first day of May, 1882.

2. The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power ; and every assurance, instrument, and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency, or revocation was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid, and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

4. (a.) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

Deposit of original instruments creating powers-of-attorney.

(b.) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(c.) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(d.) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court.

(e.) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (a), (b), and (c).

(f.) Throughout British Burma, the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the High Court.

(g.) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

5. A married woman, whether a minor or not, shall, by virtue of this Power-of-attorney of married Act, have power, as if she were unmarried and of women. full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto.

This section applies only to instruments executed after this Act comes into force.

Act XXVIII. of 1866, s. 39, repealed.

6. The Trustees' and Mortgagees' Powers Act, 1866, section 39, is hereby repealed.

PRESIDENCY SMALL CAUSE COURTS ACT, NO. XV. OF 1882.

RECEIVED THE G.-G.'s ASSENT ON THE 17TH MARCH 1882.

*An Act to consolidate and amend the law relating to the Courts
of Small Causes established in the Presidency-towns.*

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras, and Bombay ; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Presidency Small Cause Courts Act, 1882;" and it shall come into force on the first day of July, 1882.

Short title.

Commencement.

But nothing herein contained shall affect the provisions of the Army Act, 1881, section 151, or the rights or liabilities of any persons under any decree passed before that day.

2. On and from the said day the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

Repeal of enactments.

But all Courts constituted, appointments made, and securities given under any of the said enactments, shall, so far as may be, be deemed to have been respectively constituted made, and given under this Act.

All references to any enactment hereby repealed, made in Acts passed prior to the said day, shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

References in previous Acts.

3. In Act No. XXIII. of 1850 (*for securing the Land-Revenue of Calcutta*), section 3, for the word and figures "Act VII., 1847," the words and figures, "The Presidency Small Cause Courts Act, 1882, Chapter VIII.," shall be substituted;

the words, "as provided by the said Act," shall be repealed; and for each of the expressions, "a Commissioner of the Court for recovery of small debts referred to in the said Act," and "the said Commissioners," the words, "the Judges of the Court of Small Causes at Calcutta," shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures, "Chapter XXXIX.," the words and figures, "and by the Presidency Small Cause Courts Act, 1882," shall be inserted.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras, or Bombay, as the case may be, defined.

"Small Cause Court"

Calcutta, Madras, or Bombay, as the case may be,

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be in each of the towns of Calcutta, Madras, and Bombay, Courts of Small Causes established. a Court, to be called the Court of Small Causes of Calcutta, Madras, or Bombay, as the case may be.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras, or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts, and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

7. Subject to the control of the Governor-General in Council, the Local Appointment, suspension, and removal of Judges. Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor-General in Council, remove any Judge so appointed.

All barristers who, when this Act comes into force, are, or are acting as, Judges of the Small Cause Court, shall, for the purposes of this section, be deemed to be advocates of a High Court.

Rank and precedence of Judges. 8. The Chief Judge shall be the first of the Judges in rank and precedence.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

9. Except as otherwise provided by this or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for all matters not specially provided for by this Act, and for the exercise, by one or more of its Judges, of any powers conferred on the Small Cause Court by this Act, or by any other law for the time being in force.

10. Subject to such rules, the Chief Judge may, from time to time, make Chief Judge to distribute business of Court. such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government. Seal to be used.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court ;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs, and other ministerial officers as may be necessary for the administration of justice by the Court, and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature, as the Chief Judge may, from time to time, by rule, direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed ; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney vakil, or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting, or concerned, shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament, or Act of any British Indian legislature.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court, shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

18. Subject to the exceptions in section nineteen, the Small Cause Suits in which Court has jurisdiction. Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees; and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain, within such local limits; or

(c) any of the defendants, at the time of the institution of the suit actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Suits in which Court has no jurisdiction.

19. The Small Cause Court shall have no jurisdiction in—

(a) suits concerning the assessment or collection of the revenue;

(b) suits concerning any act ordered or done by the Governor-General in Council or the Local Government, or by the Governor-General or a Governor, or by any Member of the Council of the Governor-General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor-General in Council or the Local Government;

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

(d) suits for the recovery of immoveable property;

(e) suits for the partition of immoveable property;

(f) suits for the foreclosure or redemption of a mortgage of immoveable property;

(g) suits for the determination of any other right to or interest in immoveable property;

(h) suits for the specific performance or rescission of contracts;

(i) suits to obtain an injunction;

(j) suits for the cancellation or rectification of instruments;

(k) suits to enforce a trust;

(l) suits for a general average loss and suits on policies of insurance on sea-going vessels;

(m) suits for compensation in respect of collisions on the high seas;

(n) suits for compensation for the infringement of a patent, copyright, or trade-mark;

(o) suits for a dissolution of partnership or for an account of partnership transactions ;

(p) suits for an account of property and its due administration under the decree of the Court ;

(q) suits for compensation for libel, slander, malicious prosecution, adultery, or breach of promise of marriage ;

(r) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce ;

(s) suits for declaratory decrees ;

(t) suits for possession of a hereditary office ;

(u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States ;

(v) suits on any judgment of a High Court ;

(w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

20. When the parties to a suit which, if the amount or value of the

Court may, by consent, try subject-matter thereof did not exceed two thousand suits against pecuniary limits rupees, would be cognizable by the Small Cause of jurisdiction. Court, have entered into an agreement in writing

that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed, in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

21. All suits to which an officer of the Small Cause Court is, as such, a

Suits by and against officers party, except suits in respect of property taken of Court. execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

22. If any suit cognizable by the Small Cause Court, other than a suit

Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court. to which section twenty-one applies, is instituted in the High Court, and if, in such suit, the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff ;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

CHAPTER V.

PROCEDURE IN SUITS.

23. The portions of the Code of Civil Procedure specified in the second

Portions of Civil Procedure Code extending to Court. schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court ; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act :

Provided that the Court may, subject to the control of the Local Government, from time to time, by notification in the official Gazette, declare that any of the said portions of the said Code shall not extend and be applied to the Small Cause Court, or that any of such portions shall so extend and be applied with such modifications as the Court, subject to the control aforesaid, may think fit.

24. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

No written statement except in cases of set-off.

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same:

Return of documents admitted in evidence.

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct: Provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may, in its discretion, order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

Compensation payable by plaintiff to defendant in certain cases.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure, is disallowed, the Small Cause Court may, in its discretion, order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And when any claim or objection is allowed, the Court may award such compensation by way of damages to the claimant or objector as it thinks fit; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Decree-holder to accompany officer executing warrant.

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might, before the termination of his tenancy, lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

29. Whenever any judgment debtor, who has been arrested, or whose discharge of judgment-property has been seized in execution of a decree debtor on sufficient security. of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released.

30. Whenever it appears to the Small Cause Court that any judgment-Court may in certain cases debtor under its decree is unable, from sickness, suspend execution of decree. poverty, or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, Execution of decree of Small Cause Court by other Courts. moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immoveable property situate within such local limits—to the High Court;

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which Procedure when decree transferred. made them shall be the procedure followed in such cases.

32. Notwithstanding anything contained in the Code of Civil Procedure as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court, or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule, declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

34. The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same :

Registrar to hear and determine suits like a Judge.

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may, commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

Registrar may execute all decrees with the same powers as a Judge.

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

CHAPTER VI.

NEW TRIALS AND RE-HEARING.

37. Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive; but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure), order a new trial to be held, or alter, set aside, or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Judgments and orders of Court final.

Power to order new trial in Small Cause Court.

38. Any party may, within eight days after the judgment in any suit in the Small Cause Court in which the amount or value of the subject-matter exceeds one thousand rupees, apply to the High Court for an order that such suit may be re-heard in the High Court.

Application for re-hearing in High Court.

Such application shall be supported by affidavits, and, in case the applicant has appeared in the Small Cause Court by advocate, vakil, attorney, or pleader, by a certificate from such advocate, vakil, attorney, or pleader that in his opinion there are good grounds for re-hearing the suit, and if, on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing, and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546, and 547 of the Code of Civil Procedure, relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

39. On the day fixed under section thirty-eight or on any other day to which the re-hearing may be adjourned, the High Court or some Judge thereof, shall proceed to re-hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such

Procedure at re-hearing.

High Court in respect of suits brought in its ordinary original civil jurisdiction shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree, or order under this section.

40. Every decree or order made by any High Court upon any such re-Execution of decree of hearing may either be executed by such High High Court Court in the same manner as other decrees or orders of such Court, or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

41. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction, and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn, and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

43. If the occupant does not appear at the time appointed, and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-one, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was

executed, or by whom any such summons as aforesaid was served, for the issue, execution, or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

45. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect, or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect, or irregularity:

when no such damage is proved, the suit shall be dismissed; and when such damage is proved, but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not, at the time of applying for such order as aforesaid, entitled to the possession of such property.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

47. Whenever, on an application being made under section forty-one, the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute, without delay, a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same, or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-three.

Nothing contained in section twenty-two shall apply to suits under this section.

48. In all proceedings under this chapter, the Small Cause Court shall, as far as may be, and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

49. Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

CHAPTER VIII.

DISTRESSES.

50. This chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras, and Bombay. But nothing contained in this chapter applies—

- (a) to any rent due to Government ;
 (b) to any rent which has been due for more than twelve months before the application mentioned in section fifty-three.

51. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this chapter, and may, from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges thinks fit, and may suspend or remove them.

52. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal, and returnable within six days, to the effect of the form (marked B) contained in the same schedule addressed to any one of such bailiffs.

The Judge or Registrar may, at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

55. Every distress under this chapter shall be made after sunrise and before sunest, and not at any other time.

56. The bailiff directed to make the distress may force open any stable, outhouse, or other building, and may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter :

Provided that he shall not enter or break open the door of any room appropriated for the *zanana* or residence of women, which, by the usage of the country, is considered private.

57. In pursuance of the warrant aforesaid, the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress :

Provided that the bailiff shall not seize—

- (a) things in actual use; or
- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or
- (c) the debtor's necessary wearing apparel; or
- (d) goods in the custody of the law.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Impounding distress.

59. On seizing any property under section fifty-seven, the bailiff shall make an inventory of such property, and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises.

Inventory.
Notice of intended ap-
praisement and sale.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

60. The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant, or release such article accordingly, upon such terms as he thinks just; and any of the Judges of the said Court may, in his discretion, give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it, and attending the issue and execution of the warrant, shall be in the discretion of the Judge, and shall be paid as he directs.

61. If any claim is made to, or in respect of, any property seized under this chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim, and make such order between the parties in respect thereof and of the cost of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

62. In any case under section sixty or section sixty-one, the Judge by whom the case is heard may award such compensation to debtor or claimant, or by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

and may, for that purpose, make any enquiry he thinks necessary ;
and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

63. In any case under section sixty or section sixty-one, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction ; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction ; and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

64. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court ; and such amount shall be applied first in payment of the costs of the said distress, and then in satisfaction of the debt ; and the surplus (if any) shall be returned to the debtor :

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

66. No costs of any distress under this chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed.

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter.

Bar of distresses except under this chapter.

68. No distress shall be levied for arrears of rent, except under the provisions of this chapter ;

And any person, except a bailiff appointed under section fifty-one, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees, and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

CHAPTER IX.

REFERENCES TO HIGH COURT.

69. If two or more Judges of the Small Cause Court sit together in any Reference when compulsory suit, or in any proceeding under Chapter VII. of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

70. When judgment is given under section sixty-nine contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment :

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

Security to be furnished on such reference by party against whom contingent judgment given.

If no such security given, party to be deemed to have submitted to judgment.

CHAPTER X.

FEEs AND COSTS.

Institution-fee.

71. A fee not exceeding—

(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section thirty-eight or section forty-one ; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section twenty.

72. The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII. of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of repayment of half fees on settlement before hearing. all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under Fees and costs of poor persons. section forty-one made, by poor persons, and may issue processes on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections seventy-one and seventy-two.

75. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections seventy-one and seventy-two: Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

76. The expense of employing an advocate, vakil, attorney, or other legal practitioner incurred by any party, shall not be allowed as costs in any suit or in any proceeding under Chapter VII. of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable. Expense of employing legal practitioners.

Sections 3, 5, and 25 of Court Fees Act, 1870, saved.

77. Nothing contained in this chapter shall affect the provisions of sections 3, 5, and 25 of the Court Fees Act, 1870.

CHAPTER XI.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff, or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary. Power to fine officers.

79. If any clerk, bailiff, or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance, or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance, or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby. Default of bailiff or other officer in execution of order or warrant.

80. If any clerk, bailiff, or other inferior ministerial officer of the Small Cause Court, is charged with extortion or mis-officers. conduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

81. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

82. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

CHAPTER XII.

CONTEMPT OF COURT.

83. When any such offence as is described section 175, 178, 179, Procedure of Court in certain cases of contempt. 180, or 228 of the Indian Penal Code, is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and punish the offender with fine which may extend to two hundred rupees, and in default of payment of such fine with imprisonment in the civil jail for a term which may extend to one month, unless such fine is sooner paid.

84. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court, when interrupted or insulted, was sitting, and the nature of the interruption or insult offered.

85. If the Court considers that a person accused of any offence referred to in section eighty-three, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is, for any other reason, of opinion that the case should not be disposed of under section eighty-three, the Court, after recording the facts constituting the offence, and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates' Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

86. When the Court has, under section eight-three or section eighty-five, punished an offender, or forwarded him to a Discharge of offender on submission or apology. Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender, or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section eighty-three or section eighty-five.

88. Any person deeming himself aggrieved by an order under section eighty-three or section eighty-seven may appeal to the High Court, and the provisions of the Presidency Magistrates' Act, 1877, relating to appeals, shall, so far as may be, apply to appeals under this section.

CHAPTER XIII.

MISCELLANEOUS.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

90. The Small Cause Court shall keep such registers, books, and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the Local Government or High Court for records, returns, and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

92. The Small Cause Court shall at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

93. The Governor-General and Members of his Council, the Governors of Fort St. George and Bombay, and the Members of their respective Councils, the Lieutenant-

Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

No suit to lie upon decree of Court.

94. No suit shall lie on any decree of the Small Cause Court.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

Place of imprisonment.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

Tender in suit for anything done under Act.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed.

Limitation of prosecutions.

THE FIRST SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774.	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

THE FIRST SCHEDULE—(*concluded*).(*See section 2.*)*B.—Acts of the Governor-General in Council.*

Number and year.	Subject or short title.	Extent of repeal.
IX. of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay.	So much as has not been repealed.
XX. of 1857 ...	To amend Act IX. of 1850.	The whole.
XXVI. of 1864 ...	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
I. of 1875 ...	To regulate Distresses for Rents in the Presidency-towns.	The whole.
X. of 1877 ...	The Code of Civil Procedure.	Section eight, para 2

C.—Acts of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI. of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

THE SECOND SCHEDULE.

(*See section 23.*)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

PRELIMINARY: Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23, and 24, and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances, Applications, and Acts, except section 37, clause (b), and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule a.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (e), section 55, section 57, clause (b), and sections 58 and 62.

CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65, 66, and 86.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

THE SECOND SCHEDULE—(*concluded*).(*See section 23.*)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

CHAPTER	VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.
CHAPTER	IX.—Of the Examination of the Parties by the Court, except section 119.
CHAPTER	X.—Sending for Records, and Production, &c, of Documents, sections 137 (except paragraph 2), 138, 140 (except the proviso and the last six words), 141 (except the third sentence), 142, 143, and 145.
CHAPTER	XI.—Settlement of issues, sections 150 and 151.
CHAPTER	XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.
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CHAPTER	XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207, and 211 to 215 (both inclusive).
CHAPTER	XVIII.—Of Costs.
CHAPTER	XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).
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CHAPTER	XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause b, as relates to immovable property.
CHAPTER	XLVI.—Of Reference to and Revision by High Court.
CHAPTER	XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).

THE THIRD SCHEDULE.

FORMS.

A.

[See section 53.]

In the Small Cause Court for

A. B. (Plaintiff),

versus

C. D. (Defendant).

A. B. of , in the town of , maketh oath [or affirms]
 and saith that C. D. , of , is justly indebted to
 in the sum of Rs. for arrears of rent of the house and premises No.
 situated at , in the town of , due for months, to wit,
 from to , at the rate of Rs. per mensem.

Sworn [or affirmed] before me the day of 188 .

Judge [or Registrar].

B.

[See section 54.]

In the Small Cause Court for

FORM OF WARRANT.

I hereby direct you to distrain the moveable property of C. D., on the house
 and premises situate at No. , in the town of ; for the sum of Rs.
 and the costs of the distress, according to the provisions of Chapter VIII. of the
 Presidency Small Cause Courts Act, 1882. Dated day of 188 .

(Signed and Sealed.)

To E. F., Bailiff and Appraiser.

C.

[See section 59.]

In the Small Cause Court for

FORM OF INVENTORY AND NOTICE.

(State particulars of property seized.)

Take notice that I have this day seized the moveable property contained in the
 above inventory for the sum of Rs., being the amount of months' rent
 due to A. B. at last, and that, unless you pay the amount thereof,
 together with the costs of this distress, within five days from the date hereof, or
 obtain an order from one of the Judges or the Registrar of the Small Cause Court
 to the contrary, the same will be appraised and sold pursuant to the provisions of
 Chapter VIII. of the Presidency Small Cause Courts Act, 1882. Dated the day
 of 188 .

(Signed) E. F.,
 Bailiff and Appraiser.

To C. D.

D.

[See section 64.]

In the Small Cause Court for

Take notice that we have appraised the moveable property seized on the day
 of , under the provisions of Chapter VIII of the Presidency Small
 Cause Courts Act, 1882, of which seizure and property a notice and inventory were

THE THIRD SCHEDULE—(concluded).

duly served upon you [or upon _____ on your behalf, *as the case may be*]
 under date the _____, and that the said property will be sold on the
 [two clear days at least after the date of the notice] at _____ pursuant to the
 provisions of the said Act. Dated this _____ day of _____ 188 .

(Signed) E. F.,
 G. H.,

To C. D.

Bailiffs and Appraisers.

E.

[See section 66.]

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.				Affidavit and warrant to distrain.	Order to sell.	Commission	Total.
Rs.	Rs.			Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1 and under 5				0 4 0	0 8 0	0 8 0	1 4 0
5	"	10	...	0 8 0	0 8 0	1 0 0	2 0 0
10	"	15	...	0 8 0	0 8 0	1 8 0	2 8 0
15	"	20	...	0 8 0	1 0 0	2 0 0	3 8 0
20	"	25	...	0 12 0	1 0 0	2 8 0	4 4 0
25	"	30	...	1 0 0	1 0 0	3 0 0	5 0 0
30	"	35	...	1 0 0	1 0 0	3 8 0	5 8 0
35	"	40	...	1 0 0	1 8 0	4 0 0	6 8 0
40	"	45	...	1 4 0	2 0 0	4 8 0	7 12 0
45	"	50	...	1 8 0	2 0 0	5 0 0	8 8 0
50	"	60	...	2 0 0	2 0 0	6 0 0	10 0 0
60	"	80	...	2 8 0	2 8 0	6 8 0	11 8 0
80	to	100	...	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100	...		...	3 0 0	3 0 0	7 per centum	.....

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons are kept in charge of property distrained, four annas per day must be paid per man.

THE FOURTH SCHEDULE.

[See section 72.]

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject- matter exceeds	But does not exceed	Fee for sum- mons.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

THE NEW CODE OF CIVIL PROCEDURE.

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PART X.

CHAPTER XLIX.

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THE CODE OF CIVIL PROCEDURE.

ACT NO. XIV. OF 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH MARCH 1882.

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

Preamble. WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

PRELIMINARY.

Short title.
Commencement.

1. This Act may be cited as "The Code of M.S.C.C. Civil Procedure;" and it shall come into force on the first day of June, 1882.

Local extent. This section and section 3 extend to the whole of British India. The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV. of 1874.

On 28th September 1877 (*i. e.*, three days before Act X. of 1877 came into operation), an application was made for the enforcement of a money-decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under Act VIII. of 1859, s. 216, a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed (at which date Act X. of 1877 had come into force), and contended that, under s. 266, cl. g, of that Act, the pension was no longer attachable. Held that all proceedings, commenced and pending when Act X. of 1877 became law, were, under Act I. of 1868, s. 6, to be governed by the law theretofore in force, the general rule of construction contained in that section not being affected or varied by Act X. of 1877, ss. 1 and 3; and that a *bonâ fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment.—*Vidyâram v. Chandra Shekharrâm*, I. L. R., 4 Bom. 163.

Interpretation-clause.

2. In this Act, unless there be something M.S.C.C. repugnant in the subject or context—

"chapter:"

"chapter" means a chapter of this Code:

"district" means the local limits of the jurisdiction of a principal

"District:" Civil Court of original jurisdiction (hereinafter

"District Court:" called a 'District Court'), and includes the local

limits of the ordinary original civil jurisdiction of a High Court: every Court of a grade inferior to that of a District Court, and every Court of Small Causes, shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court:

"pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil, and an attorney of a High Court :

"Government Pleader" includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader :

"Collector" means every officer performing the duties of a Collector of land-revenue :

"decree" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court, when such adjudication, so far as regards a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is within this definition : an order specified in section 588 is not within this definition :

"order" means the formal expression of any decision of a Civil Court which is not a decree as above defined :

"judgment" means the statement given by the Judge of the grounds of a decree or order :

"Judge" means the presiding officer of a Court :

"judgment-debtor" means any person against whom a decree or order has been made :

"decree-holder" means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred :

"written" includes printed and lithographed, and "writing" includes print and lithography :

"signed" includes marked, when the person making the mark is unable to write his name ; it also includes stamped with the name of the person referred to :

"foreign Court" means a Court situate beyond the limits of British India, and not having authority in British India, nor established by the Governor-General in Council :

"foreign judgment" means the judgment of a foreign Court :

"public officer" means a person falling under any of the following descriptions (namely):—

every Judge ;

every convened servant of Her Majesty ;

every commissioned officer in the military or naval forces of Her Majesty while serving under Government ;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;

every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience ;

every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

And in any part of British India in which this Code operates,
 "Government." "Government" includes the Government of India as well as the Local Government.

AN order under s. 556 of Act X. of 1877. dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi (Judgment-debtor) v. Fakir (Decree-holder)*, I. L. R., 3 All. 382.

THE term "judicial proceeding," as used in Act X. of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit, or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhai Bhagubhai v. Amalsang Khemá Bhai*, I. L. R., 2 Bom. 553.

WHERE an order, requiring the decree holder to give security within three days, is made under s. 546 by the Judge of the Court in which the decree was passed, and in which the execution is pending, such order is appealable as a decree under the provisions of s. 2, and s. 244, cl. c.—*Luchmeput Singh v. Sitanath Doss*, I. L. R., 8 Cal. 477.

A DECREE of a Small Cause Court can be executed by it at any place within the local limits of the District Court to which it is subordinate, as defined by Act X. of 1877, s. 2, without having recourse to the procedure under s. 618, which applies only to cases in which a decree passed in one district has to be executed in another district.—*Badan Bebajea v. Kila Chand Bebajea*, I. L. R., 4 Cal. 823.

THE expression "person referred to" in s. 2 of Act X. of 1877 means person referred to in the subsequent sections of the Code, as being required to sign or verify certain documents, and it is not a condition precedent to such person being able to use a stamp that he should be unable to write his name.—*Maharajah of Benares (Plaintiff) v. Dabi Dayal Nowa (Defendant)*, I. L. R., 3 All. 575.

NOTWITHSTANDING the provisions of s. 12 of the Court Fees Act (VII. of 1870), an order rejecting a plaint on the ground of its being insufficiently stamped is appealable as a "decree" within the definition of "decree" in the Civil Procedure Code as amended by Act XII. of 1879.—*Ajodhya Pershad Singh and others (Plaintiffs), Appellants, v. Gunga Pershad and others (Defendants), Respondents*, 6 Cal. Law Rep. 567.

A COLLECTOR, when acting under s. 204 of Act XIX. of 1873 as the agent of the Court of Wards in respect of the estate of a disqualified person, is a public officer within the meaning of ss. 2 and 424 of Act X. of 1877, and consequently, when sued for acts done in that capacity, is entitled to the notice of suit required by the latter section.—Collector of Bijnor, Manager of the Estate of Chaudhri Ranjit Singh, a Minor (Defendant), *v.* Munuvar (Plaintiff), I. L. R., 3 All. 20.

A DECREE-HOLDER, within the meaning of the Civil Procedure Code, is the person whose name appears on the record as the person in whose favour the decree was made, or some person whom the Court has, by order, recognized as the decree-holder from the original plaintiff or his representatives. S. 235 of the Civil Procedure Code puts on the party applying for execution the obligation of stating any adjustment between the parties after decree; that is, any matter not done through the Court, as well as any agreement through the Court.—Paupáyya *v.* Narasamiah, I. L. R., 2 Mad. 216.

THE effect of the proviso to s. 3 of Act X. of 1877 (taken in connection with the definition of the word "decree" in s. 2) is that, in all suits pending when that Act came into force, the practice and procedure to be followed down to the final result of such suits (*i.e.*, when nothing remains to be done but to execute the decree or to appeal from it) are the same as previously existed, but that, in all subsequent proceedings in execution of the decree or in appeal from it, the practice and procedure provided by Act X. of 1877 are to be observed.—Rustomji Barjorji *v.* Kessowji Naik, I. L. R., 3 Bom. 161.

Per SPANKIE, J.—An order refusing an application to file a private award in Court is appealable as a decree.—Jokhun Rai *v.* Bucho Rai (N. W. P. H. C. Rep., 1868, p. 353) and Hussaini Bibi *v.* Mohsin Khan (I. L. R., 1 All. 156), impugned and distinguished: Vishnu Bhan Joshi *v.* Ravji Bhan Joshi (I. L. R., 3 Bom. 18) distinguished. *Per* Stuart, C.J.—An order refusing an application to file a private award in Court on grounds not mentioned in ss. 520 and 521 is a decree, and appealable as such.—Janki Tewari and others (Plaintiffs) *v.* Gayan Tewari and another (Defendants), I. L. R., 3 All. 427.

An Appellate Court rejected the application of the legal representative of a deceased sole plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the Appellate Court, passed under the first paragraph of s. 366 of Act X. of 1877, not being appealable under cl. 18, s. 588, of that Act, nor being a decree within the terms of s. 2, from which a second appeal would lie, was not appealable.—Ahmad Ata (Plaintiff) *v.* Mata Badal Lal (Defendant), I. L. R., 3 All. 844.

An order under s. 549 of the Civil Procedure Code rejecting an appeal because security has not been furnished, as directed under that section, is a "decree" within the meaning of s. 2, from which an appeal will lie. The discretion conferred on an Appellate Court by s. 549 to demand security for costs must be properly exercised; and such discretion is not so exercised when the order requiring such security is made without notice to the appellant to show cause why the order should not be made. No order affecting a party should be made without notice to him calling upon him to show cause why the order should not be made.—Siraj-ul-buq *v.* Khadim Husain, I. L. R., 5 All. 380.

By a decree in an administration-suit, A was appointed Receiver "to manage the estate." A died, and by a subsequent order B was appointed Receiver. One of the defendants in the suit applied to have B removed from the office of Receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—Mithibai (Plaintiff) *v.* Limji Nowroji Banaji and others (Defendants); Harivallubhdás Calliandás (Original Defendant), Appellant, *v.* Ardasar Framji Moos (Receiver and Respondent), I. L. R., 5 Bom. 45.

WHERE it was shown that a judgment-creditor was himself the purchaser at an execution-sale, and the amount for which he so purchased the property of his judgment-debtor was set off against the amount due to him under his decree, and

where, on the application of the judgment-debtor, the Court passed an order setting aside the sale on the ground of fraud practised by the judgment-creditor on the judgment-debtor in connection with the sale in consequence of which the property had been sold at an undervalue, *held* that, inasmuch as the order involved the decision of a question between the parties to the suit relating to the execution, discharge, on satisfaction of the decree (the decree having been satisfied as far as the purchase-money bid by the decree-holder went, and the order cancelling that *pro tanto* satisfaction), though not appealable under the provisions of s. 588, cl. 16, was appealable as a decree under the provisions of the Code of Civil Procedure (Act XIV. of 1882), s. 2, and s. 244, cl. c.—*Ballodeb Lall Bhagat v. Anadi Moha-pattro*, I. L. R., 10 Cal. 401.

NONE but barristers and attorneys have a legal right to practise in the Bombay Court of Small Causes. Neither ss. 2 and 36 of the Code of Civil Procedure (Act No. XIV. of 1882), nor ss. 38 and 76 of the Presidency Small Cause Courts Act (No. XV. of 1882), give the pleaders of the Bombay High Court that right. The provisions of s. 47 of Reg. II. of 1827, authorizing persons holding *sanads* from the High Court to practise in the Mofussil Courts, are still in force. *Per* Bayley, West, Pinhey, and Latham, JJ.—S. 2 of the Code of Civil Procedure, 1882, does not give every pleader a title to appear and plead; it only enacts that pleader means every person entitled to appear and plead for another in Court, and includes an advocate, a *vakil*, and an attorney of a High Court. Consequently, if pleaders or *vakils*, who are the same class of practitioners, are not entitled by law to appear or plead for another in Court, the definition of 'pleader' gives them no new right or *status*. The words in s. 36 of the Code of Civil Procedure, Act XIV., 1882, "by a pleader duly appointed to act on his behalf," do not simply mean a person duly appointed by the party in the suit, but a pleader duly appointed according to law regarding pleaders in force in the particular Court.—*In re* The Pleadings of the High Court, I. L. R., 8 Bom. 105.

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently, one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and that he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and some of the parties, not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have had such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them: that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done, it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the accounts had been settled, and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.*, the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and as it had power to remit it upon

such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sadik Ali Khan (Plaintiff) v. Imdad Ali Khan and others (Defendants)*, I. L. R., 3 All. 286.

M.S.C.C.

3. The enactments specified in the first schedule hereto annexed

Enactments repealed.

are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed, and framed hereunder.

And when, in any Act, Regulation, or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII. of 1859, Act No. XXIII. of 1861, or the "Code of Civil Procedure," or to Act No. X. of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suits instituted before 1st suit instituted or appeal presented before the June, 1882. first day of June, 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Every appeal pending on the twenty-ninth day of July, 1879, which

Appeals pending on 29th would have lain if this Code had been in force July, 1879.

on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under Act No. X. of 1877, section 320, and every notification published before the same day, purporting to be issued under Act No. X. of 1877, section 360, shall be deemed to have been respectively passed and issued in accordance with law.

THE effect of Act I. of 1868, s. 6, and Act X. of 1877, s. 3, taken together, is that the chapter of the new Code of Civil Procedure which deals with execution of decree is prospective, and does not affect proceedings already commenced.—In the matter of the petition of Ratansi Kaliánji and six others, I. L. R., 2 Bom. 148 (F. B.). See also I. L. R., 3 Cal. 662 (F. B.); also I. L. R., 4 Cal. 825. But see I. L. R., 2 All. 74.

THE word "decree" in Act X. of 1877, s. 3, means an order final in its nature, and does not include an interlocutory order, such as an order of reference to take accounts, although such order may, in general, be properly termed a "decree;" and therefore a suit which has been referred by the Court to the Commissioner to take accounts is still in a stage "prior to decree" within the meaning of s. 3.—*Rustomji Burjorji v. Kessowji Naik*, I. L. R., 3 Bom. 161.

THE effect of the proviso to s. 3 of Act X. of 1877 (taken in connection with the definition of the word "decree" in s. 2) is that, in all suits pending when that Act came into force, the practice and procedure to be followed down to the final result of such suits (i.e., when nothing remains to be done but to execute the decree or to appeal from it) are the same as previously existed, but that, in all subsequent

proceedings in execution of the decree or in appeal from it, the practice and procedure provided by Act X. of 1877 are to be observed.—*Rustomji Burjorji v. Kes-sowji Naik*, I. L. R., 3 Bom. 161.

WHERE a suit has been instituted under Act VIII. of 1859, but decided at a time when Act X. of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of the latter Act distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal, presented when Act X. of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its re-admission under s. 558; and if such re-admission is refused, he is entitled to an appeal under s. 558.—*Elahi Buksh v. Marachow*, I. L. R., 4 Cal. 825.

ON 28th September 1877 (*i.e.*, three days before Act X. of 1877 came into operation), and application was made for the enforcement of a money-decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under Act VIII. of 1859, s. 216, a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed (at which date Act X. of 1877 had come into force), and contended that, under s. 266, cl. g, of that Act, the pension was no longer attachable. *Held* that all proceedings, commenced and pending when Act X. of 1877 became law, were, under Act I. of 1868, s. 6, to be governed by the law theretofore in force, the general rule of construction contained in that section not being affected or varied by Act X. of 1877, ss 1 and 3; and that a *bona fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment.—*Vidyaram v. Chandra Shekharrám*, I. L. R., 4 Bom. 163.

IN ALL suits instituted before Act X. of 1877 came into force, in which an appeal lay to the High Court under Act VIII. of 1859, an appeal still lies, notwithstanding the repeal of that Act by Act X. of 1877. *Per* Garth, C.J.—A suit is a “judicial proceeding,” and the words “any proceeding” in Act I. of 1868, s. 6, include all proceedings in any suit from the date of its institution to its final disposal, and therefore include proceedings in appeal. The word “procedure” in Act X. of 1877, s. 3, has not the same meaning as the word “proceedings” in the above-mentioned section. The proceedings in a suit instituted before Act X. of 1877 came into force, including a special appeal if the old Code allowed one, go on to the end of the suit, notwithstanding the repeal of the old Code. The “procedure” (*i.e.*, the machinery by which those proceedings are conducted) is, after decree, to be that provided by the new Code. *Per* Jackson, J.—The word “decree,” as defined in Act X. of 1877, does not include “orders,” either original or appellate, upon matters arising in the course of a suit or in execution of a decree. The power of the High Court to hear appeals from the Civil Courts in the interior is regulated by Act VI. of 1871. Act I. of 1868, s. 6, covers proceedings taken in execution of decree which have been commenced before Act X. of 1877 came into force. *Per* Markby, Mitter, and Ainslie, JJ.—Cl. 16 of the Letters Patent of 1865 empowers the High Court to hear appeals in all cases in which an appeal lay under Act VIII. of 1859.—*Runjit Singh v. Maheraan Koer*, I. L. R., 3 Cal. 662 (F. B.). See also I. L. R., 2 Bom. 148 (F. B.); I. L. R., 1 All. 668 (F. B.); I. L. R., 4 Cal. 825.

WHERE, an appeal having been filed, the respondent objected that no appeal lay, and by agreement of the parties the case was set down for the argument of this preliminary point, *held* that the appellant had the right to begin. Cl. 3 of s. 3 of the Civil Procedure Code (XIV. of 1882) provides that nothing in that Code shall apply to any proceedings after decree that had been commenced and were still pending on the 1st June, 1882. In case of any question connected with proceedings commenced prior to that date the applicability of the Code of 1882 depends on whether the new proceeding subsequent to that date, out of which the question has immediately arisen, is so intimately connected with the proceedings prior to that date as to be regarded as part of them. A decree was passed in 1870, by which the suit was referred to the Commissioner to take accounts. On the 21st June 1882, the Commissioner, in the course of taking the said accounts, issued a warrant ordering the defendants to show cause why they should not give inspection

of certain books. *Held* that the question as to inspection was so intimately connected with the taking of the accounts that it should be regarded as part of the same proceedings, and as these had commenced and were still pending on the 1st June 1882, the question whether the order refusing inspection was appealable or not was (under s. 3 of Act XIV. of 1882) to be determined by the Civil Procedure Code (Act VIII. of 1859), and not by the Code of 1882. S. 11 of Act XXIII. of 1861 must be read as an amendment to the Civil Procedure Code (Act VIII. of 1859). That section is, in terms, confined to questions arising in the execution of decrees, which expression, as used in the said Code, means the enforcement of the decree on the application of one or other of the parties to it. *Held* that an order of a Judge confirming the report of the Commissioner for taking accounts, by which he refused to require the defendants to give inspection of certain books, was not an order within the contemplation of that section, and was, therefore, not appealable.—*Rustomji v. Kessowji Naik*, I. L. R., 8 Bom. 287.

Saving of certain Acts affecting Central Provinces, Burma, Panjáb, and Oudh.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely):—

The Central Provinces Courts Act, 1865 :

The Burma Courts Act, 1875 :

The Panjáb Courts Act, 1877 :

The Oudh Civil Courts Act, 1879 :

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents :

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.

And where, under any of the said Acts, concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall, for the purposes of this Code, be deemed to be the District Court.

M.S.C.C.

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI. of 1865, and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras, and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapters and sections of this Code do not extend to such Courts.

THE effect of Act X. of 1877, s. 5, coupled with sch. 2, is to render the whole of Chap. XX (relating to insolvent debtors) inapplicable to a Mufussal Small Cause Court, notwithstanding the words "any Court other than a District Court" and "any Court situate within his district," which occur in that section. Consequently the Government Resolution of 3rd April 1878, investing the Judge of the Small Cause Court at Ahmedabad with power, under the said chapter, to adjudicate in insolvency matters, is *ultra vires* and invalid.—*Lallu Ganesh v. Ranchhod Kahandás* I. L. R., 2 Bom. 641.

Saving of jurisdiction and procedure—

(a) of Military Courts of Request;

6. Nothing in this Code affects the jurisdiction or procedure—

(a) of Military Courts of Request;

(b) of a single officer duly appointed in the Presidency of Bombay

(b) of officers appointed to try small suits in military bázars at cantonments and stations occupied by the troops of that Presidency; or

(c) of Village Munsifs and Village Pancháyats in Madras; (c) of Village Munsifs or Village Pancháyats under the provisions of the Madras Code; or

(d) of Recorder of Rangoon sitting as an Insolvent Court in Rangoon, Maulmain, Akyab, or Bassem:

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

THE Deputy Commissioner of Akyab, sitting as District Judge, has power to entertain applications under Act X. of 1877, Chap. XX. S. 6 (d) of that Act interposes no obstacle in the way of his dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the Recorder of Rangoon" sitting as an Insolvent Court in Akyab within the meaning of that section.—*In re Abdool Hamed*, I. L. R., 4 Cal. 94.

7. With respect to

(a) the jurisdiction exercised by certain jágirdárs and other authorities invested with powers under the provisions of Bombay Regulation XIII. of 1830 and Act No. XV. of 1840 in the cases therein mentioned; and

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases, and in the appeals to the Civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

8. Save as provided in sections 3, 25, 86, 223, 225, 386, and Chap-

ter XXXIX., "and by the Presidency Small Cause Courts Act, 1882,"* this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras, and Bombay.

But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code, or any part thereof, except so far as relates to appeals and reviews of judgment.

WHILST the pecuniary jurisdiction of the Small Cause Court was limited to Rs. 1,000, the plaintiffs brought a suit for that amount for damages for breach of a certain contract after abandoning the excess, and in that suit they elected a non-suit under s. 53, Act IX. of 1850. *Held*, in a suit brought in respect of the same damages for the full amount due to them, that the plaintiffs were not precluded, by their having abandoned the excess in the former suit, from recovering the full amount sued for.—*Simson v. Gora Chand Dass*, I. L. R., 9 Cal. 473.

THE Madras Court of Small Causes has no jurisdiction in insolvency. The second paragraph of s. 8 of the Code of Civil Procedure, 1882, which authorized the Local Government, by notification published in the official Gazette, to extend to the Presidency Small Cause Court certain portions of the said Code, is repealed by the

* The words quoted have been inserted by Act XV. of 1882.

Présidency Small Cause Court Act (s. 2 of Act XV. of 1882), and consequently the notification of the Governor in Council of Fort St. George, dated 25th February, 1879 conferring on the Madras Court of Small Causes jurisdiction in insolvency, being repugnant to s. 8 of the Code of Civil Procedure, 1882, as amended, if otherwise valid, ceased to have effect when Act XV. of 1882 came into force—*In re Waller*, I. L. R., 6 Mad 430.

A, a British subject, executed a bond (unregistered), hypothecating property in British India to B. After the limitation-period in British India had expired, B sued upon the bond in a French Court, and, having obtained an *ex-parte* decree, sued for the enforcement in British India. A pleaded that no notice was given him of the proceedings in the French Court, and B's suit was dismissed. A then applied to the French Court to cancel its *ex-parte* decree, pleading that, inasmuch as the bond was executed in British India, the French Court was bound to apply the British Indian laws of registration and limitation. On a trial on the merits, the French Court found that the bond was executed in French territory, and decided, confirming its first decree, that the British statutes pleaded did not apply. A appealed from the decree to a French Appellate Court, and his appeal was dismissed. B sued in British India on the French judgments, and A now pleaded that the French Courts had not, at the time those judgments were given, jurisdiction over him. The Court of first instance decreed B's suit, and the lower Appellate Court dismissed it on appeal. *Held*, restoring the decree of the original Court, that A, though a British subject, and not, in the particular circumstances of the case, subject to the jurisdiction of the French Court, had, nevertheless, equitably estopped himself from pleading that those Courts had not jurisdiction over him. In suing as a plaintiff in the Courts of a country to which he owed no allegiance, he had voluntarily submitted to their jurisdiction, and he could not afterwards object to the validity of the judgments of those Courts on the ground that they had no jurisdiction over him. *Held* also, following VIII M. H. C. R. 14, that where the defendant in a suit in a foreign Court, without objecting to the competency of the Court to entertain the suit, appeared in that Court, and took his chance of a judgment in his favour, he placed himself for the time under the jurisdiction of the Court, and could not afterwards take exception thereto. An irregularity, even if proved, in the procedure of a foreign Court, was not sufficient reason for refusing to enforce a judgment of such Court. Where limitation was merely prohibitive of the remedy, and not destructive of the right, the judgment of a foreign Court was not open to objection on the ground that a suit on the contract would be barred by the law of limitation applicable in the country in which the contract was made. The mere possession of property in a foreign country did not, by reason of the protection enjoyed, confer on the Courts of that country jurisdiction over a foreigner neither domiciled nor resident therein in respect of matters unconnected with the property. Second Appeal No. 407 of 1878.—*Nallthamli Mudahar v. Ponnusami Pillai*, 4 Ind. Jur. 239.

9. This Code is divided into ten Parts as

Division of Code.

follows :—

- The first Part : Suits in General.
- The second Part : Incidental Proceedings.
- The third Part : Suits in particular Cases.
- The fourth Part : Provisional Remedies.
- The fifth Part : Special Proceedings.
- The sixth Part : Appeals.
- The seventh Part : Reference to and Revision by the High Court.
- The eighth Part : Review of Judgment.
- The ninth Part : Special Rules relating to the Chartered High Courts.
- The tenth Part : Certain Miscellaneous Matters.

PART I. OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

No person exempt from jurisdiction by reason of descent or place of birth.

10. No person shall, by reason of his de- M.S.C.G.
scent or place of birth, be, in any civil proceed-
ing, exempted from the jurisdiction of any of
the Courts.

11. The Courts shall (subject to the provisions herein contained)
have jurisdiction to try all suits of a civil na-
ture, excepting suits of which their cognizance
is barred by any enactment for the time being in force.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

In execution of a decree certain land belonging to the judgment-debtor was sold; subsequently the auction-purchaser, who had not got possession, re-sold the land to a third party, and gave him the certificate. The latter then applied to the Court to be put into possession, but having failed in those proceedings, owing to some irregularity in the description of the boundaries of the property, he instituted a regular suit against the judgment-debtor to obtain possession. On a plea that such suit would not lie, as the plaintiff could have got possession in the miscellaneous proceedings, *held* that, having regard to the provisions of art. 138 of sch. ii. of Act XV. of 1877 and of s. 11 of Act XIV. of 1882, such suit was maintainable.—*Seru Mohun Bania v. Bhagoban Din Pandey*, I. L. R., 9 Cal. 602.

Suits as to religious rites or ceremonies, which involve no question of the right to property or to an office, are not suits of a civil nature, nor are they intended to be brought within the jurisdiction of the Civil Courts. A suit, therefore, by the plaintiffs, as members of a committee of management of a Hindú temple, to compel the hereditary priests of the temple to take out certain ornaments from the treasury of the managing committee, and to obtain a declaration that the said ornaments, after they had been so taken out of the treasury, were in the custody of the priests, and that they were responsible for their safe custody, was held unsustainable. S. 11 of the Civil Procedure Code, Act X. of 1877, introduces no new law, but merely declares the law as it has always been administered.—*Vásudev and another (Original Defendants), Appellants, v. Várnáji and others (Original Plaintiffs), Respondents*, I. L. R., 5 Bom. 80.

ALTHOUGH it is not the duty of a Civil Court to pronounce on the truth of religious tenets, nor to regulate religious ceremony, yet, in protecting persons in the enjoyment of a certain status or property, it may incidentally become the duty of the Civil Court to determine what are the accepted tenets of the followers of a creed, and what is the usage they have accepted as established for the regulation of their rights *inter se*. A claim to the exclusive right to perform certain portions of the religious worship in a Hindú temple, and to restrain a rival sect from joining in such worship otherwise than as ordinary worshippers, can be enforced by the decree of a Civil Court. A claim to damages for the loss of honours and voluntary offerings which would have been made by worshippers at a temple to the holders of a religious office therein, had the latter not been disturbed by the defendants in the performance of the duties of

such office, is not enforceable by law.—Krisnasami Tatacharyar and others (Defendants), Appellants in No. 127, Respondents in No. 141, v. Krishnamacharyar and others (Plaintiffs), Respondents in No. 127, Appellants in No. 141, I. L. R., 5 Mad. 313.

M.S.C.C.

12. Except where a suit has been stayed under section 20, the

Pending suits.

Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India, having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor-General in Council and having like jurisdiction, or before Her Majesty in Council.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

THE judgment of a foreign Court, obtained on a decree of a Court in British India, is no bar to the execution of the original decree.—Fakuruddeen Mahomed Assan v. The Official Trustee of Bengal, I. L. R., 7 Cal. 82.

M.S.C.C.

13. No. Court shall try any suit or issue in which the matter directly

Res judicata.

and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The matter above referred to must, in the former suit, have been alleged by one party, and either denied or admitted, expressly or impliedly, by the other.

Explanation II.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation III.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

Explanation IV.—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party, or re-consider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

Explanation V.—Where persons litigate *bond fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

Explanation VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence

that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

AN ORDER refusing an application to execute a decree is not an adjudication within the rule of *res judicata*.—Hurrooondary Dasee v. Juggobundhoo Dutt, I. L. R., 6 Cal. 203.

UNDER ACT X. of 1877, s. 13, the law is now the same as it was under Act VIII. of 1859, prior to the passing of Act I. of 1872.—Náranji Bhikhábhái v. Dipá Umed, I. L. R., 3 Bom. 3.

A DECISION of a Revenue Court disallowing an application to eject a tenant, because he has built on his land, does not, under s. 13 of the Civil Procedure Code, bar a suit in the Civil Court to have the building demolished.—Amrit Lal v. Balbir, I. L. R., 6 All. 68.

S. 13 is not exhaustive as to the effect of *res judicata*. It does not deal with the case of judgments *in rem*, nor with that of parties represented by, though not claiming under, the parties to a former suit.—Ahmedbhoy Hubibhoy v. Vulleebhoy Cassumbhoy Satbai and Fazulbhoy Cassumbhai, I. L. R., 6 Bom. 703.

THIS section does not require a plaintiff at once to assert all his titles to property, or to be thereafter estopped from advancing them. The maxim, *Nemo bis vezari debet in eadem causâ*, cannot apply where the right on which the second suit is brought is not the same as that asserted in the former suit.—Sadaya Pillai v. Chinni, I. L. R., 2 Mad. 352.

ACT X. of 1877, s. 13, expl. 5, only applies to cases where several different persons claim an easement or other right under one common title, *e.g.* where the inhabitants of a village claim by custom a right of pasturage over the same tract of land or to take water from the same spring or well.—Kalishunkur Doss v. Gopal Chunder Dutt, I. L. R., 6 Cal. 49.

AN APPLICATION by petition under Act II. of 1874, s. 63, is a suit within the meaning of Act X. of 1877, s. 13, and therefore is barred by the disposal of a former application in the same matter under the same section or under Act XXIV. of 1867, s. 60, which the Act of 1874 repeals. This is so whether the order is one for payment of money or one dismissing the petition.—Eliza Smith v. The Secretary of State, I. L. R., 3 Cal. 340.

EXPLANATION 5 to s. 13 of the Code of Civil Procedure would not make a judgment obtained in a suit against one co-sharer binding on another co-sharer no party to such suit, in respect of the rights enjoyed in common by such co-sharers in their common property. Nor could such explanation be applied to a case instituted, or the judgment delivered in such case, during the time when the old Code of Civil Procedure was in force.—Hazir Gazi v. Sonamonee Dasee, I. L. R., 6 Cal. 31.

ACCORDING to the rule of *res judicata* in England, in order to make an adjudication in one suit a bar to the plaintiff's proceeding in another, it must be shown, 1st, that the parties in both suits are the same; 2nd, that the thing sought to be recovered is the same; 3rd, that the grounds upon which the claim is founded are the same; and, 4th, that the character in which the parties sue, or are sued, is the same.—Per Garth, C.J., Denobundoo Chowdry v. Kristomonee Dossee, I. L. R., 2 Cal. 152.

WHERE one of several co-sharers, owners of a piece of land defined by metes and bounds forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of the Government revenue annulled, such suit is cognizable by the Civil Courts which have jurisdiction to determine the plaintiff's right to have his share divided and to make a decree accordingly.—Chundernath Nundi (Plaintiff) v. Har Narain Deb (Defendant), I. L. R., 7 Cal. 153.

NOT only may the plea of *res judicata*, though not taken in the memorandum of appeal, be entertained in second appeal, under the provisions of s. 542 of Act X. of 1877, but even when such plea has not been urged in either of the lower Courts, or in the memorandum of appeal, if raised in the second appeal, it must be considered

and determined either upon the record as it stands, or after a remand for finding of fact.—Mhammad Ismail (Plaintiff) *v.* Chhattar Singh and another (Defendants), I. L. R., 4 All. 69.

WHEN the judgment of a Court of first instance upon a particular issue is appealed against, that judgment ceases to be *res judicata* and becomes *res sub-judice*; and if the Appellate Court declines to decide that issue, and disposes of the case on other grounds, the judgment of the first Court upon that issue is no more a bar to a future suit than it would be if that judgment had been reversed by the Court of appeal.—Nilvaru (Original Plaintiff), Appellant, *v.* Nilvaru and others (Original Defendants), Respondents, I. L. R., 6 Bom. 110.

A CLAIM to certain pecuniary benefits and payments in kind, which a plaintiff alleges himself to be entitled to receive from the defendants in respect of the performance of certain religious services, is a claim which the Courts of Justice are bound to entertain; and if, in order to determine the plaintiff's right to such benefits, it becomes necessary to determine incidentally the right to perform the services, the Courts must try and must decide that right.—Krishnama and others (Plaintiffs) *v.* Krishnasami and others (Defendants), I. L. R., 2 Mad. 62.

HELD by the Full Bench that the law of *res judicata* does not apply in proceedings in execution of a decree. *Held*, therefore, by the referring Bench, where, on an application for the execution of a decree, the question was raised whether the decree awarded mesne-profits or not, and the Court executing it determined that it did not award mesne-profits, that such determination was not final, but such question was open to re-adjudication on a subsequent application for execution of the decree.—Rup Kuari (Judgment-debtor) *v.* Ram Kirpal Shukul (Decree-holder), I. L. R., 3 All. 141 (F. B.).

IN a suit by raiyats against their zamindár, praying for measurement of certain land, and for a declaration of the amount of yearly rental, it appeared that, in a previous suit for rent by the zamindár against the raiyats, the raiyats had alleged that the amount of rent and the extent of land had been over-stated by the zamindár, but the Court decided that the raiyats were bound by a jamabandi signed by them, and refused to try whether the extent had been over-stated. *Held* that the present suit was not barred as *res judicata*.—Roghoo Nath Mundul *v.* Juggut Bundhoo Bose, I. L. R., 7 Cal. 214.

WHERE a Division Bench of the High Court decided, as a point of law, that a property had not passed under a certain deed of sale, and subsequently the decision on that point of law was in another case disapproved of by a Full Bench, the decision of the Division Bench (where the same plaintiff has again sued to recover the same property relying on the same deed of sale) is no less a *res judicata*, because it may have been founded on an erroneous view of the law, or a view of the law which a Full Bench has subsequently disapproved.—Gowri Koer *v.* Audh Koer, I. L. R., 10 Cal. 1087.

PENDING the final hearing in appeal of a suit for confirmation of possession of certain land, and for the recovery of the produce of such land alleged to have been carried away by the defendants, the plaintiff brought a suit again, asking not only for confirmation of possession, but also for the recovery of the produce which had arisen since the institution of the other suit. *Held* that the second suit, so far as it sought for the recovery of the produce, was not barred by the first suit.—Bissessur Singh and others (Plaintiffs), Appellants, *v.* Gupat Singh and others (Defendants), Respondents, 8 Cal. Law Rep. 113.

THE plaintiff sued to recover certain lands, claiming them as a portion of A, and alleging that A was portion of a mouza which had been leased to him in patni by the zamindár. The suit was dismissed, on the ground that, though A was known as a part of the plaintiff's mouza, yet it had been included in a patni-lease of an adjoining mouza, which the zamindárs had granted to the defendants previously to the date of the plaintiff's lease. The plaintiff brought a second suit claiming another portion of A on the same title. *Held* that the claim was barred as *res judicata*.—Sundhya Mah. *v.* Dabi Chandra Dutt, I. L. R., 6 Cal. 715.

IN 1874 V sued P to recover certain lands held by him under a rental agreement dated 1873. S was made a defendant on the ground that he held one plot as under-

tenant to P. S claimed to hold under N. As to this plot, the issue raised was whether the land was held by S under P ; the decision, that S did not hold under P, but under N, since 1828 ; the decree, that V's suit be dismissed as to this plot. *Held*, in a suit brought in 1881 by V against N and S to recover the same plot of land, that the suit was not barred by reason of the previous decision in 1874.—*Ananda Raman Vathrar v. Paliyil Vitul Naun Nayar* and another, I. L. R., 5 Mad. 9.

PLAINTIFF sued for a declaration of *murosee mokurruree* rights to certain lands and for mesne-profits, alleging that he had been wrongfully ejected by the predecessors in title of the defendants. A previous suit on the same cause of action was heard and dismissed on the ground of limitation. *Held* that the present suit was not barred as *res judicata* under Act VIII. of 1859, s. 2 (corresponding with Act X. of 1877, s. 13), inasmuch as the first suit having been brought after the period allowed by law, the Court in which it was instituted was not competent to hear and determine it.—*Brindabun Chunder Sirkar v. Dhununjoy Nushkur*, I. L. R., 5 Cal. 246.

A COURT having jurisdiction decided in the course of execution-proceedings (in an order which was not appealed) that the decree to be executed awarded mesne-profits according to its true construction. *Held* that this decision had become final between the parties, not under s. 13 of Act X of 1877, but upon general principles of law, as an interlocutory order in the suit. The order constituting the decree having been made in the same suit in which the application was made, the question whether the law of "*res judicata*" applied was not relevant, that term referring to a matter decided in another suit.—*Ram Kirpal v. Rup Kuari*, I. L. R., 6 All. 269.

MATTER in issue may be defined as matter from which, either by itself or in connection with other matter, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows (s. 3, Ev. Act) ; and the first and second explanations shew that matter will be considered to have been directly and substantially in issue, if it is matter in issue which might and ought to have been put forward by either plaintiff or defendant in the previous suit. If the plaintiff might have made the same claim in the prior action, but did not, the subsequent suit will be barred.—*Denobundoo Chowdry v. Kristomonee Dossee*, I. L. R., 2 Cal. 152.

THE question whether the parties to a suit in a Court of Revenue for arrears of rent stand in the relation of landlord and tenant is one which it is necessary for such Court to try incidentally for the purpose of disposing of such suit, but not one which such Court has special jurisdiction to determine, and its determination of that question is not that of a competent Court. Consequently, where a Court of Revenue determines, in such a suit, that the parties do not stand in such relation, such determination does not bar the party alleging that the parties do stand in such relation from suing in the Civil Court to establish such relation.—*Gopal (Plaintiff) v. Uchabal and others (Defendants)*, I. L. R., 3 All. 51.

A DECREE against a Karnavan of a Malabar tarwad, as such, is binding upon the members of that tarwad, though not parties to the suit, in the absence of fraud or collusion. A Karnavan is not a mere trustee, nor do the rules of Courts of Equity as to the necessity of making *cestui que trusts* parties to suits against trustees by strangers apply to the case of a Karnavan and the members of the tarwad. Explanation 5 of s. 13, Civil Procedure Code, is not limited to the case of a suit under s. 30. The members of a tarwad claim under a Karnavan, suing as such, within the meaning of Explanation 5 of s. 13. Status of Karnavan discussed.—*Varanakot Narayanan Namburi v. Varanakot Narayanan Namburi*, I. L. R., 2 Mad. 328.

ACT X. of 1877, s. 13, expl. 2, was meant to apply to a case where the defendant has a defence which, if he had so pleased, he might, and ought to, have brought forward ; but, as he did not bring it forward, the suit has been decreed against him. Under such circumstances the defendant is as much bound by the adverse decree as if he had set up the defence, and he is equally estopped from setting up that defence in any future suit under similar circumstances. The explanation was never intended to enable a party to treat a point of law as having been decided in his

favour in a former suit, which was, in fact, not so decided, and which it was not necessary, for the purposes of the suit, to decide at all.—*Ghursobhit Abir v. Ramdutt Singh*, I. L. R., 5 Cal. 923.

A SUED B for rent in the Court of the Deputy Collector of Tipperah under the provisions of Act X. of 1859. C intervened, claiming that the land in respect of which the rent was claimed was his property, and the suit was dismissed. On appeal, the District Judge of Tipperah reversed this decision and decreed the claim, on the ground that C had no right whatever to the land. In a subsequent suit brought by C against A and B for possession of the same land, *held* that the previous decree of the District Judge did not constitute the plaintiff's claim a *res judicata*, and was no bar to the suit. *Dinanath Bose v. Kali Kumar Roy* [B. L. R., Sup. Vol., 364 ; S. C., 5 W. R. (Act X. Rul.) 23] followed.—*Mahomed Assurudin v. Beer Chunder Manikya* and others, I. L. R., 8 Cal. 470.

I, to whom the obligee of a bond for the payment of money in which immoveable property was hypothecated had assigned by sale her right thereunder, sued, by virtue of the deed of sale on such bond, for the money due thereunder, claiming to recover by the sale of the hypothecated property. The suit was dismissed on the ground that the deed of sale, not being registered, could not be received in evidence, and consequently I's right to sue on such bond failed. I, having procured the execution of a fresh deed of sale, and caused it to be registered, brought a second suit on such bond by virtue of such deed of sale, claiming as before. *Held* that the second suit was not barred by the provision of s. 13 of Act X. of 1877.—*Ishri Dat (Plaintiff) v. Har Narain Lal* and others (Defendants), I. L. R., 3 All. 334.

THROUGH ignorance of the position of affairs, one only of two persons, joint owners in a property, was sued for a debt for which the property had been pledged by the person sued, and a decree was obtained and execution issued against the property ; and in such execution-proceedings the other sharer put in a claim, and obtained an order releasing her share of the property from attachment. A second suit was then brought by the judgment-creditor against both sharers, for the purpose of making the share of the co-sharer, who had not been previously sued, available to satisfy the defendant, and praying that the order releasing the property from attachment might be set aside. *Held* that such a suit would lie, and would not be barred as *res judicata*.—*Nobin Chundra Roy v. Magantara Dassya*, I. L. R., 10 Cal. 924.

IN A suit to recover possession of certain land, where it appeared that there had been a previous suit between the same parties with respect to the same land, in which the then plaintiff sought to have their possession confirmed, and that in that suit the lower Courts had decided the case both on the question of title and possession, but on special appeal the High Court had dealt only with the question of possession, and in dismissing the appeal had not gone into the question of title, and the defendant in that suit subsequently sued to recover possession of the land, *held* that the question of title was still open between the parties, and had not been heard and finally decided by a Court of competent jurisdiction in a former suit within the meaning of s. 13 of Act X. of 1877 (Civil Procedure Code).—*Gungabishen Bhugut v. Roghoonath Ojha*, I. L. R., 7 Cal. 381.

WHEN a question of title has to be, and is, decided by a Court of competent jurisdiction with reference to the value of the subject-matter in dispute, such decision, or the ultimate decision upon appeal from such decision, is final, and the question of title becomes a *res judicata* as between the parties to the suit, although it may have the effect of determining the title to an estate or estates, the value of which exceeds the jurisdiction of the Court in which the suit was instituted. *Per White, J.*—In considering, on the hearing of an appeal, the competency of a Court for the purpose of deciding upon a question of *res judicata*, the powers of the Court in which the suit was instituted, and not those of the Court in which the suit was decided on appeal, must be looked to.—*Toponidhee Dhirjgir Gosain (Plaintiff) v. Sreeputti Sahanee (Defendant)*, I. L. R., 5 Cal. 832.

A KARNAVAN of a Malabar tarwad having a right at any time to demand restoration of the property of the tarwad in the hands of the Anandravan is not debarred by s. 13 or s. 43 from bringing a second suit to recover lands in the wrongful possession of an Anandravan, either by the fact that in a former suit between the same

parties, the Karnavan only laid claim to some of the lands sued for, or by the fact that the former suit was dismissed upon the joint petition of the parties, alleging a compromise and a surrender of the lands which, as a fact, were not surrendered, but wrongfully retained by the Anandravan. An Anandravan has no right to the value of improvements effected by him on tarwad property upon surrender to the Karnavan when such improvements are not made with private funds.—Uramkumarath Kannan Nayar v. Uramkumarath Tenju Nayar and another, I. L. R., 5 Mad. 1.

IN ORDER to see whether a question is *res judicata* within the meaning of s. 13, Civil Procedure Code, the former decree and the questions decided thereby must alone be considered. The words in s. 13, "has been heard and finally decided by such Court, do not apply to an opinion expressed in the judgment on other issues not material for the purpose of the decree, though properly determined under s. 204 by the Court of first instance—Niamut Khan v. Phadu Beldia (I. L. R., 6 Cal. 319) and Lachman Singh v. Mohan (I. L. R., 2 All. 497) dissented from. Where a plaintiff improperly brings a defendant before a Court, and this suit is dismissed, the defendant should not be deprived of costs, merely because the Court considers the defence a fabrication to meet the plaintiff's claim.—Devarakonda Narasama (First Defendant), Appellant, and Devarakonda Kanaya (Plaintiff), Respondent, I. L. R., 4 Mad. 134.

WHERE the plaintiff in a suit prays that a person may be substituted on the record as the heir of a defendant who has died, the Judge should raise an issue as to whether the person sought to be substituted is the heir of the deceased defendant. In 1872, A brought a suit on a mortgage against the mortgagor, a Hindú widow, who died pending the suit. A then applied that the suit should be revived against B as the representative of the defendant. B denied that he was such representative, but the Judge refused to go into the question, made B a party, and gave A a decree for the sale of the mortgaged property. B subsequently brought a suit to have it declared, *inter alia*, that the mortgage and decree only covered the widow's life-interest. *Held* that the suit was not barred either as *res judicata* or under the provisions of s. 244 of the Code of Civil Procedure.—Kanai Lal Khan v. Sashi Bhuson Biswas, I. L. R., 6 Cal. 777.

THE plaintiff brought in 1876 a suit against the defendant in respect of the same subject-matter, and founded on the same cause of action as the present suit. Issues of fact arising on the merits were inquired into; but a certificate of the Collector under s. 6 of the Pensions Act (No XXIII. of 1871), which was necessary to give jurisdiction to the Court, not having been obtained, the claim was rejected on that ground. *Held* that the Court not having legally pronounced on the merits of the former case, the opinions expressed on the issues were not *res judicata* so as to bar the maintenance of the present suit. The non-production of the Collector's certificate does not necessarily constitute such a want of due diligence on the plaintiff's part as to disentitle him to the deduction of time allowed by s. 14 of the Limitation Act (XV. of 1877).—Putali Meheti (Applicant) v. Tulja (Opponent), I. L. R., 3 Bom. 223.

S CAUSED a notice of ejectment to be served upon K in respect of certain land, alleging that he held the same by virtue of a lease which had expired. K contested his liability to be ejected under s. 39, denying that he held the land by virtue of such lease, and alleging that he held it under a right of occupancy. The Revenue Court decided that K held the land under a right of occupancy, and not under such lease. S thereupon sued K in the Civil Court, claiming possession of such land, on the allegation that K was a trespasser wrongfully retaining possession thereof after the expiration of his lease. *Held* that the suit was cognizable in the Civil Courts, and the decision of the Revenue Court did not render the matter in issue *res judicata*. The provisions of s. 13 of Act X. of 1877 do not apply to applications such as those under s. 39 of Act XVIII. of 1873.—Sukhdaik Misr and others (Plaintiffs) v. Karim Chandhri and another (Defendants), I. L. R., 3 All 521.

S AND B jointly sued N for the redemption of a mortgage of an eight-anna share of a village, B suing as the purchaser from the mortgagor of a moiety of such share. N did not, in defence of such suit, assert a right of pre-emption in respect of such moiety, although such right had accrued to him on its sale by the mortgagor to B. S and B obtained a decree in such suit, and the mortgage was redeemed.

N subsequently sued B and his vendor to enforce his right of pre-emption in respect of such moiety. *Held* that it was incumbent upon N in the former suit to have asserted in defence his right of pre-emption in respect of such moiety, inasmuch as, if that right had been established, it must, so far as B was concerned, have proved fatal to his title to redeem, and that, as he had not done so, the suit to enforce his right of pre-emption was barred by the provisions of s. 13 of Act X. of 1877, Explanation II.—*Narain Dat (Plaintiff) v. Bhoiro Bukhsal and others (Defendants)*, I. L. R., 3 All. 189.

A DECREE obtained *ex parte* is not final within the meaning of expl. 4, s. 13, of Act X. of 1877. Such a decree is not conclusive evidence of the amount of rent payable by the same defendant in another suit for subsequent rent of the same property. Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for a previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex parte*, and which he also alleged had been duly executed, as evidence of the amount of rent due to him by the defendant, but it appeared that the lower Court had found that the alleged execution-proceedings were fraudulent, and that no steps had been taken which gave finality to the decree, *held* that the decree was not conclusive evidence of the amount of rent due from the defendant, or of the questions with which it dealt.—*Nilmoney Singh v. Heera Lall Dass*, I. L. R., 7 Cal. 23.

IN 1870 the plaintiffs sued to redeem a mortgage of certain lands from the defendant's predecessors in title. The suit was dismissed on the ground that the plaintiffs' equity of redemption had been sold in execution of a decree to A B. The plaintiffs, having re-purchased the equity of redemption from A B, brought a second suit to redeem the lands in the defendants' possession. *Held* that the question whether the equity of redemption of the lands in suit had been sold to A B was *res judicata*, and could not be re-opened by the defendants on the ground that the plaintiffs were litigating under a different title in the former suit. The admissions of a person whose position in relation to property in suit it is necessary for one party to prove against another are in the nature of original evidence and not hearsay, though such person is alive, and has not been cited as a witness.—*Ali Moidin Ravuthan and others (Fourth, Fifth, Sixth, and Seventh Defendants), Appellants, v. Elaya Chanidathil Kombi Achen and another (Plaintiffs), Respondents*, I. L. R., 5 Mad. 239.

A LANDLORD, having tendered a pattá at a certain rate, sued his tenants in the Court of the District Munsif to recover rent for Fasli 1289 (1879-80). The tenants pleaded that they were not bound to accept the pattá tendered by virtue of an implied contract, which entitled them, without exchange of pattá and muchalká, to hold the land permanently at a lighter rent. The District Munsif and, on appeal, the District Court decided that no implied contract had been proved by the tenants. The suit was dismissed on the ground that the pattá tendered was not one which the tenants were bound to accept under Act VIII of 1865 (Madras). The landlord then sued in the Revenue Court to compel the tenants to accept a pattá for Fasli 1291 (1881-82), and the tenants again put forward the same plea. *Held* that the question whether the tenants were entitled to hold permanently at a lighter rate without exchange of pattá and muchalka was not *res judicata* by virtue of the decree in the former suit.—*Muttukumarappa v. Arumuga*, I. L. R., 7 Mad. 145.

CERTAIN persons, claiming by right of inheritance to C, sued B, N, A, K, and others for possession of certain immoveable property, and, on appeal to the High Court in August 1876, their claim was decreed in full. In the course of the litigation which ended in that decree, Z purchased certain immoveable property from B, N, A, and K. Z was subsequently dispossessed of such property in execution of the decree of August 1876. He thereupon sued the holders of that decree for possession of the same, alleging that his vendors had inherited it from D, that the figures of the total of C's property given in the plaint in the former suit were erroneous, that the property now in suit was not affected by that decree, and that he had been improperly dispossessed of it. It appeared that there was, in fact, a mistake in the total of the extent of C's property as stated in the plaint in the former suit. *Held* that the plaintiff, having purchased *pendente lite*, was bound by the decree of the High Court against the persons through whom he claimed; that

the claim in the former suit having been decreed in full, the property now in suit was then decreed to the present defendants; and that the claim of the plaintiff to go behind that decree could not be entertained.—*Hukm Singh v. Zanki Lal*, I. L. R., 6 All. 506.

AN *ex-parte* decree is not final within the meaning of explanation iv., s. 13 of the Civil Procedure Code, Act X of 1877, so long as it is open to the Court, on the application of the parties, to modify it.—*Nilmoni Singh Deo* (Plaintiff), Appellant, v. *Hira Lal Dass* (Defendant), Respondent, 8 Cal. Law Rep. 257.

WHERE there has been a suit between an agriculturist mortgagor and his mortgagee for an account merely, a subsequent suit for possession on payment of the money declared to be due is barred under either s. 13 or s. 43 of the Code of Civil Procedure.—*Bháu Balaji v. Hari Nilkanthráv*, I. L. R., 7 Bom. 377.

IN 1866 S obtained a decree authorizing him to recover certain property on payment of a certain sum to the mortgagee, but not declaring that S would be foreclosed if he did not exercise his right of redemption. *Held* that S was not debarred from bringing a suit to redeem the same property in 1881.—*Sáni v. Soma-sundram*, I. L. R., 6 Mad. 119.

A HINDU widow and her son, the then presumptive heir to property claimed by the widow, obtained a decree against a more remote reversionary heir. The son predeceased his mother, and the person against whom the decree had been obtained became the next reversionary heir. *Held*, in a suit for possession by him, that the decree in the previous suit did not operate as *res judicata*.—*Ram Chunder Poddar v. Hari Das Sen*, I. L. R., 9 Cal. 463.

IN order to constitute the bar of *res judicata* it is not sufficient merely that an issue on the same point should have been raised in the former suit, although that issue may have been incidentally decided; but it must appear that the matter referred to was alleged by one party, and either denied or admitted, expressly or impliedly, by the other.—*Shama Charan Chatterji and others* (Appellants) v. *Prosono Coomar Santikar and others* (Respondents), 5 Cal. Law Rep. 251.

A DECREE obtained by A in a suit brought by him to establish a right to close a passage, over which an easement by prescription was claimed by the defendant in respect of his own house, is no bar, on the ground of *res judicata*, to a suit against A by a third person claiming an easement similar to that claimed by the defendant in the former suit over the same passage, and in respect of a house similarly situated.—*Kali Shunkar Dass* (Plaintiff), Appellant, v. *Gopal Chunder Dutt* (Defendant), Respondent, 6 Cal. Law Rep. 543.

K, the purchaser of certain immoveable property in execution of a decree, sued for possession of the same. The suit was dismissed "in the form in which it was brought," because the plaintiff had not filed with the plaint the sale-certificate. K subsequently brought a fresh suit. *Held* that the dismissal of the former suit "in the form it was brought" did not amount to permission to sue again contemplated by s. 373 of the Civil Procedure Code, and such dismissal must be regarded as a "decision" thereof in the sense of s. 13, expl. iii., and therefore as a bar to the fresh suit.—*Ganesh Rai v. Kalka Prasad*, I. L. R., 5 All. 595.

IN 1870 two plots of land, numbered 155 and 147, belonging to the same owner, were sold in execution of a decree. The purchaser of plot 155 sold it to A, who in 1873 sued the tenant of a portion of the land for rent. In this suit A prayed that it might be declared that he was the owner. The tenant alleged that B, the purchaser of plot 147, was the owner of the land in respect of which rent was sought to be recovered, and B was made a party to the suit. At the hearing A did not appear, and the suit was dismissed for default. Subsequently A sold plot 155 to the present plaintiff, who now sued for possession. *Held* that the suit was not barred as *res judicata*.—*Gobind Chunder Addya v. Afzul Rabbani*, I. L. R., 9 Cal. 426.

A LEASED lands to B, who sued C for possession of a certain mauza, alleging it to be a portion of the lands leased. A was made a defendant, and supported the case of the plaintiff, who obtained a decree. C appealed, making A and B respondents, when the decree was reversed, and the suit dismissed, on the ground that the mauza sued for was the property of C; and that ruling was upheld on special appeal.

to the High Court. Subsequently A brought a suit against C for the same mauza, making B a defendant. *Held* that the title to the mauza was *res judicata* between A and C, and that the suit would not lie. Govind Chunder Koondoo v. Taruck Chunder Bose (I. L. R., 3 Cal. 146) followed.—Bissorup Gossamy v. Gorachand Gossamy, I. L. R., 9 Cal. 120.

IN A suit for possession of a plot of land situate in B, the plot was claimed by the plaintiff as appertaining to mauza M, and by the defendant as appertaining to mauza S, and each party set up a patta from the same lossor, the zamindar, in proof of his title. It was held that while the land known as B appertained to mauza M, the patta of the defendant was prior in date to that of the plaintiff, and that the defendant therefore had the superior title. A second suit for another plot of land situate in B was subsequently instituted by the same plaintiff, and the same title put forward. *Held* that the matter in dispute was *res judicata* by the former suit.—Sundhyamuli (Defendant), Appellant, v. Devi Charan Dutt and others (Plaintiffs), Respondents, 9 Cal. Law Rep. 216.

AN ALLOWANCE for the maintenance of a younger member of a family was charged upon the inheritance to which the eldest male member alone succeeded. In a suit for such an allowance brought by a younger brother against the elder, who had succeeded their deceased father in the possession of the estate, *held* that an order made dismissing a claim for maintenance preferred by such younger brother against their father in his lifetime, founded on an ekarnama, did not afford a defence under s. 13 of the Code of Civil Procedure. *Held* also that the brothers having made an agreement, fixing the allowance for maintenance at a certain sum, the younger brother agreeing to receive a less sum for a defined period, he could only obtain a decree for the allowance so reduced.—Ahmad Hossein Khan v. Nihal-ud-din Khan, I. L. R., 9 Cal. 945.

AN OCCUPANCY tenant, who had been ejected under ss. 34 and 93 (b) of the North-Western Provinces Rent Act, on the ground that he had committed an act mentioned in those sections which rendered him liable to ejectment, sued in the Civil Court for a declaration of his right of occupancy and to have the decree of the Revenue Court directing his ejectment declared of no effect, on the ground that his act was not one of those rendering him liable to ejectment, being authorized by local custom. *Held* that the question of the plaintiff's liability to ejectment on account of the act in question, being a matter the cognizance of which was limited to the Revenue Courts, and the decision of the Revenue Court against him having become final, the plaintiff's suit was barred by s. 13 of the Civil Procedure Code. Ruj Babadur v. Birmla Singh (I. L. R., 3 All. 85) distinguished.—Radha Persad Singh v. Salik Rai, I. L. R., 5 All. 245.

IN A suit for rent and for ejectment the defendant pleaded that his tenure was transferable and *istemrari*, and consequently protected by the Rent Law. In a former suit for arrears of previous years, in which the defendant pleaded that his tenure was *istemrari*, the plaintiff obtained a decree for ejectment on non-payment of rent within 15 days. In that case the defendant saved his tenure by payment within the time stated. *Held* that, inasmuch as the defendant might, in the former suit in which the nature of the tenure was put in issue, have urged that his tenure was both transferable and *istemrari*, he could not, in the present suit, be allowed to alter his defence, and rely upon the tenure being transferable.—Woomatara Debi v. Unno-poorna Dossee (2 B. L. R., P. C., 158) cited and followed. (Compare new Act X. of 1877, s. 13, expl. ii.)—Denomoya Dabia Chaudhrain and another (Plaintiffs), Appellants, v. Anungo Moyi and others (Defendants), Respondents, 4 Cal. Law Rep. 599.

A HAVING sued B for possession of a piece of land, and obtained a decree for possession of a portion only, entered into an agreement, by the terms of which he was to take a greater part of the land than he was entitled to under the decree, upon the condition that he (A) should not prefer an appeal, and that, in the event of his doing so, the whole land claimed in the suit should become the property of B. In contravention of this agreement A appealed and obtained a decree for possession of the entire piece of land, whereupon B instituted a suit, claiming to have possession of the same in terms of the agreement. *Held* that the agreement was valid, although its effect was practically to render the former suit inoperative; and, further, that the previous suit between the parties was no bar to B's suit, a new cause

of action having arisen upon the breach of the agreement.—*Jati Ran Talookdar* (Plaintiff), Appellant, *v. Dass Ram Kolita* (Defendant), Respondent, 3 Cal. Law Rep. 574.

A AND B executed a document providing for the repayment of a loan to C. C subsequently sued A and B for the amount of the loan, basing the suit upon an alleged oral agreement by A and B to repay their proportionate shares of the debt. This suit failed, and C brought a fresh suit to recover the same amount on the document executed by A and B. *Held* (Kernan, J., dissenting) that the matter in issue in the second suit was substantially different from that in issue in the first, and that ss. 13 and 43 of the Civil Procedure Code did not apply. S. 13, explanation ii., did not apply, there being a separate cause of action in the second suit, which could not have been made a ground of attack in the first. *Held* that a document which provided for the delivery of paddy in addition to a specific sum of money was not a "promissory note." To ensure as a promissory note, an instrument must contain a promise to pay money only. Referred case 6 of 1878.—*Muthu Chetti v. Muthan Chetti and others*, 4 Ind. Jur. 567.

AN ADOPTION having been held to be valid by the High Court on appeal from a Subordinate Court, an appeal to the Privy Council was preferred, when the parties entered into a compromise, and the appeal was permitted to be withdrawn. *Held* that the decree of the High Court as to the validity of the adoption became final, and was not affected by the compromise so as to allow the matter to be again litigated between the parties or their privies. Although the decision of a Court as to the validity of an adoption in a suit between A and B may, in any subsequent proceedings between A and those claiming under him on the one side, and B and those claiming under him on the other, estop the parties to such proceedings from again questioning the validity of the adoption, yet in a suit where both the contesting parties claim under B such decision will not operate as an estoppel so as to prevent the validity of the adoption being again questioned by either party to such suit.—*Vythilinga v. Vijayathammal*, I. L. R., 6 Mad. 43.

THE obligee of a bond payable by instalments sued the obligor for four instalments, claiming with reference to the terms of such bond interest on such instalments from the date of such bond. The obligor contended in that suit that, on the proper construction of the bond, the interest on such instalments should be calculated from the dates of default. The obligee obtained a decree for interest as claimed. The obligee subsequently again sued the obligor for four instalments, again claiming interest on such instalments from the date of such bond. The obligee contended again in the second suit that interest should only be calculated from the dates of default. *Held* that the question as to the date from which interest due on the defaulting instalments was exigible under the terms of such bond was *res judicata*. It is the "matter in issue," not the "subject-matter" of the suit, that forms the essential test of *res judicata* in s. 13 of Act X. of 1877—*Phalwan Singh* (Plaintiff) *v. Risal Singh and another* (Defendants), I. L. R., 4 All. 55.

N SUED W for a moiety of a brick-kiln, claiming by right of inheritance, and alleging in respect of the other moiety that it was his own property. W, in her defence to the suit, denied that N had any right in the kiln, and that a moiety of the kiln belonged to him. An issue was framed on the point whether a moiety of the kiln belonged to W, which the Court of first instance decided in N's favour. N eventually obtained a decree for a moiety of the kiln which he claimed by right of inheritance. W appealed, contending, *inter alia*, that it was not proved that a moiety of the kiln belonged to N. The appeal was decreed, and the decree of the Court of first instance in N's favour was set aside. W subsequently sued N for the value of bricks which he had wrongfully taken from the kiln. N set up as a defence to the suit that a moiety of the kiln belonged to him. *Held* that the issue whether a moiety of the kiln belonged to N was *res judicata* under s. 13, expln. i. of the Civil Procedure Code.—*Wilaiti Begam v. Nur Khan*, I. L. R., 5 All. 514.

A OBTAINED a decree against B, the widow of C, for possession of property mortgaged by her to A's father. E and D, the reversionary heirs of C, intervened in the suit, and the decree was made as against them. In the schedule to the plaint, the mortgaged property was described as including mauza A and 8 annas of mauza B, and mauza B was described as "usli with dakhili," that is, mauza C and mauza D,

but in the body of the plaint it was described simply as manza B. After A's death, D and E commenced an action against his son F for an adjudication of their right to 16 annas of manza D, and it was found that manzas C and D were not "usli with dakhili," but two distinct manzas, and that the former mortgaged-deed had not included manza D. *Held* (affirming the judgment of the High Court at Calcutta) that in the first suit the Court was called upon to adjudicate upon the property as described in the body of the plaint and not as described in the schedule, and that the decree in that suit was no bar to the second suit.—*Babu Het Narain Sing v. Babu Ram Prasad Singh* and others, 4 Ind. Jur. 471.

A HINDU sued for compensation for the loss of his daughter's service in consequence of her abduction by the defendant, and for the costs incurred by him in prosecuting the defendant criminally for such abduction. The defendant was convicted on such prosecution. *Held* that the decision of the Criminal Court did not operate under s. 13 of Act X. of 1877 to bar the determination in such suit of the question whether the defendant had or had not abducted the plaintiff's daughter. Also that the plaintiff was entitled to recover the costs of such criminal proceedings. The daughter in this case was a married woman, who had been deserted by her husband, and at the time of her abduction was living with the plaintiff, her father. *Held* by Stuart, C.J.—That the suit by the father for compensation for the loss of his daughter's services in consequence of her abduction was, under the circumstances, maintainable. *Held* by Oldfield, J.—That a suit by a Hindú father for the loss of his daughter's services in consequence of her abduction is not maintainable.—*Ram Lal* (Defendant) *v. Tula Ram* (Plaintiff). I. L. R., 4 All. 27.

G SOLD an estate nominally to the minor son of K, but in reality to K. K brought a suit in his minor son's name against N, the mortgagee of such estate, to redeem the same. N set up as a defence to such suit that such sale was invalid under Hindú law, as such estate was a share of certain undivided property of which he was co-sharer, and had been made without his consent. It was finally decided in that suit that such estate was a share of such undivided property and not the separate property of G, and that such sale was invalid, having been made without the consent of N, a co-sharer of such undivided property. G subsequently redeemed such estate, and, having done so, sold it a second time to K. N thereupon sued K to set aside such sale on the same ground as that on which he had defended the former suit. *Held* that the issue in such suit, whether such estate was a share of undivided property or the separate property of G, was *res judicata*, inasmuch as K, though not in name, yet in fact, was a "party" to the former suit in which such issue was raised and finally decided.—*Khut Chand* (Defendant) *v. Narain Singh* (Plaintiff), I. L. R., 3 All. 812.

EXPLANATION 5 of s. 13 of Act X. of 1877 only applies to cases where several different persons claim an easement or other right under one common title, as, for instance, where the inhabitants of a village claim by custom a right of pasturage over the same tract of land or to take water from the same spring or well. Where therefore A, in defending a suit brought against him by B, to have it declared that he had a right to build a wall across a drain, set up a prescriptive right to use the drain, and it was decided that no such prescriptive right existed in A; and, subsequently, C brought a suit against B, claiming to use the same drain as an easement, and asking for the removal of the wall in question in the former suit, and B set up the judgment in the suit between himself and A as a bar to the suit, *held* that the right claimed by C not being one which he and other inhabitants of the neighbourhood claimed under one common title, but a prospective right which he claimed individually in respect of his own house and premises, and depending upon the length of time he had used the right, was a separate claim, and that the judgment in the suit between B and A did not operate as a bar to his suit.—*Kalishunkar Doss v. Gopal Chunder Dutt*, I. L. R., 6 Cal. 49.

CERTAIN immoveable property was attached in execution of a money-decree held by A, dated 22nd August, 1871. On 1st April, 1872, the same property was subsequently attached in execution of a decree held by B, dated 19th August, 1871, which directed the sale of the property in satisfaction of a charge declared thereby. The property was sold in execution of the decree. The Munsif directed that the proceeds of the sale should be paid to B, A, who claimed them on the ground that

he had first attached the property, appealed against this order. The Judge, declaring that A was entitled to the proceeds, reversed the Munsif's order. A then obtained an order from the Munsif, directing B to refund the money, which he did, and it was paid to A. B sued A to recover the money by establishment of his prior right to the same, and for the cancellation of the Judge's order, alleging that the same was made without jurisdiction. *Held* (by a majority of the Full Bench) that the suit was one for money received by the defendant for the plaintiff's use, and was therefore governed by sch. 2, art. 60. *Held* (by the Division Bench) that A was not entitled, as the first attaching creditor, to the sale-proceeds.—*Ram Kishan v. Bhawani Das*, I. L. R., 1 All. 333 (F.B.). See also *Bhawani Kuar v. Rikhi Ram*, I. L. R., 2 All. 354.

THE decision of a Court, in order to be conclusive in another Court, must have been that of a Court which would have had jurisdiction to decide the question raised in the subsequent suit in which the decision is given in evidence as conclusive. The words "Court of competent jurisdiction," used in s. 13 of the Code of Civil Procedure, include the meaning that the first Court must not have been precluded by the pecuniary limits of its jurisdiction from deciding the question raised in the other. The two Courts must exercise such concurrent jurisdiction in regard to the pecuniary limit of their powers that the subject-matter of the second suit would not have been beyond the powers of the Court which disposed of the prior one. The defence made to a suit on a bond for Rs. 12,000 and interest thereon, in a Court having no pecuniary limit of jurisdiction, was that in a prior suit for Rs. 1,665, balance of interest, brought in a Court with power to try suits not exceeding Rs. 5,000 in value, the principal sum due on that bond had been decided to be Rs. 4,790. *Held* that the issue as to the amount of principal due on the bond has not been heard and finally decided by a Court of competent jurisdiction within the meaning of s. 13.—*Misir Ragho Bardial v. Sheo Baksh Singh*, I. L. R., 9 Cal. 439.

PLAINTIFF sued for a declaration that certain lands were his, and for possession of them. Defendant No. 1 claimed the ownership of the lands; defendant No. 2 claimed to be mortgagee in possession. The decree simply dismissed the suit; but the lower Court found, as a fact, that the ownership of the lands was in the plaintiff, although the plaintiff was not entitled to possession of them by reason of the mortgage to defendant No. 2. Defendant No. 1 now appealed on the ground that, although the decree itself was entirely in her favour, she would be prejudiced in any future proceedings if the finding of fact, as to the ownership of the lands, were left unchallenged. *Held* that the appeal would not lie; for the decree is what must be looked to to see what was conclusively decided, and there was nothing in the decree actually passed which the plaintiff could afterwards use as *res judicata* in his favour; and an appeal is not admissible on any point not having the authority of *res judicata*. An adjudication is only conclusive evidence of the facts established therein or properly tending thereto; hence from a simple judgment against him a party cannot deduce anything in his favour as *res judicata*, for nothing in his favour can have been an essential element of an adverse decree.—*Anusuyabái v. Sakháram Pándurang*, I. L. R., 7 Bom. 464.

N BROUGHT a suit against P for enhancement of rent. P's defence was, *first*, that no notice of enhancement had been given; *secondly*, that the rent was not enhanceable, as he and his predecessors in title had held it at a fixed rent from the date of the Permanent Settlement. The suit was dismissed on the ground that no notice had been given; but the Munsif stated in his judgment that he considered the rent enhanceable, because he did not believe in the genuineness of the documentary evidence produced by P. The decree merely ordered that the suit should be dismissed, the portion of the judgment as to the enhanceability of the rent not being embodied in the decree. P, therefore, had no right of appeal against that portion of the judgment. In a subsequent suit by N against P, for enhancement of rent of the same tenure, it was held that, on the rule laid down by the Privy Council in *Soorjeeemonee Dayee v. Suddanund Mohapatter*, and *Krishna Behari Roy v. Bunvari Lall Roy*, P was precluded, by the decision in the former suit, from denying that the rent of the tenure was enhanceable, although the decision on that point was not embodied in the decree. The material findings in each case should be embodied in the decree, and if they are not, it is incumbent on the parties, to avoid their being

bound by decisions against which they have no right of appeal, to apply to amend the decree in accordance with the judgment.—*Niamut Khan v. Phadu Buldia*, I. L. R., 6 Cal 319.

In 1852 A acquired a plot of land (I.) by Government grant. The adjoining plot (II.) had in 1851 been granted by gautidari lease to D; but in 1853 another lease of it was granted, by a person who claimed to be the agent of the owner, to E. In 1859, E sued A for trespass on a piece of land, which he alleged to be part of II., but which A had cultivated as being part of I., and obtained judgment, against which A appealed to the Privy Council. Pending the appeal D sued for possession of II., and obtained judgment against E. D failed to pay his rent, and II. was up for sale, and sold to B, who thereupon obtained leave to be made a party to the appeal to the Privy Council, and filed a case in which he alleged that the interest of the original respondent had ceased, and that he himself was precluded from enforcing his rights pending the appeal. The Judicial Committee allowed the appeal on the ground that the disputed land belonged to F, but they stated that they did not adjudicate upon any question of title as between the persons interested in II., and they made no order for payment of costs by B. B afterwards sued A's executor for possession of the disputed land. *Held* (reversing the judgment of the High Court at Calcutta) that B's claim was *res judicata* by the previous judgment of the Privy Council. A direction as to costs cannot alter the effect of judgment as between the parties to the action.—*Belchambers, executor of Tiery, v. Ashootosh Dhur*, 4 Ind. Jur. 527.

SO LONG as the benami system is recognised in this country, it is to be presumed, in the absence of any evidence to the contrary, that a suit instituted by a benamidār has been instituted with the full authority of the beneficial owner, and any decision made in such suit will be as much binding upon the real owner as if the suit had been brought by the real owner himself. *Meheroonissa Bibee v. Hur Churn Bose* (10 W. R. 220); *Kallee Prosunno Bose v. Dina Nath Bose Mullick* (19 W. R., 434); and *Sita Nath Shah v. Nobin Chunder Roy* (5 C. L. R. 102), discussed. In a suit for malikana the issue between the parties substantially raises the question of the proprietary right to the estate in respect of which the malikana is claimed, and when the question of the proprietary right has been decided in a previous suit between the same parties a subsequent suit for malikana will be barred as *res judicata*. In s 13 of Act XIV. of 1882 the words "in a Court of jurisdiction competent to try such subsequent suit" refer to the jurisdiction of the Court at the time the first suit is brought. Thus when the first suit is within the jurisdiction of a Munsif, and the subsequent suit, by reason of an increase in value of the property, is beyond his jurisdiction, such subsequent suit would nevertheless be barred, inasmuch as, if the subsequent suit had been brought at the time when the first suit was brought, the Munsif would have been competent to try it.—*Gopi Nath Chobey v. Bhugwat Pershad*, I. L. R., 10 Cal. 697.

THE plaintiff, a member of a Malabar Nambúdi family, sued for certain land, claiming it as the property of his family, the *Vadasheri* illam. He had been dispossessed by the defendants, under a decree declaring their title to the land against the plaintiff's elder brother, who claimed it on behalf of the *Vadasheri* illam. *Held* that the plaintiff was not estopped by the former decree from recovering the land. *Per Innes, J.*—The question whether a decree obtained against the Karnavan of a Nayar tarwad or of a Nambúdi illam in Malabar is binding on the family is purely one of procedure. The *dictum* in *Varanakot Náráyanan Nambúri v. Varanakot Náráyanan Nambúri* (I. L. R., 2 Mad. 328), that in the absence of fraud or collusion a decree against the Karnavan, as such, is binding on the Anandravans of the tarwad, is not warranted by any provision of the Code of Civil Procedure. Every member of the tarwad is entitled to be made a party, or to have notice under s. 30 of the Code of Civil Procedure, in any suit, the object of which is to affect the tarwad property. Explanation 5 of s. 13 of the Code of Civil Procedure does not refer to *bona-fide* defences, but to *bona-fide* claims, and does not make a decree binding on a person not a party to it, where the actual defendant was jointly interested with such person in the subject-matter of the suit, and defended the suit *bona-fide*. *Hazir Ghazi v. Sonamonee Dassee* (I. L. R., 6 Cal. 31) approved.—*Vásudéva v. Náráyana*, I. L. R., 6 Mad. 121.

IN December, 1878, H, a Hindú widow, in possession, by way of maintenance, of a certain estate, of which R owned one-third, and P, B, and S, one-third jointly, made a gift thereof to N. H died in January, 1879. In February, 1879, R and P, B and S, joined in suing N for a declaration of their proprietary right to two-thirds of the estate and to have the deed of gift set aside. The Court trying this suit treated it as one for a mere declaration, of right, and dismissed it, with reference to the provisions of s. 42 of the Specific Relief Act, 1877, on the ground that the plaintiffs had omitted to sue for possession, although they were not in possession, and were able to sue for it. In November, 1879, R and P, B and S, again joined in suing N. In this suit they claimed possession of two-thirds of the estate, and to have the deed of gift set aside. *Held* by the Full Bench (reversing the judgment of Pearson, J., and affirming that of Oldfield, J.) that the decision in the first suit was no bar to the determination in the second suit of the question as to the validity of the deed of gift. *Per* Stuart, C.J., and Straight and Oldfield, J.J., that the causes of action in the two suits being different, the second suit was not barred by the provisions of s. 43 of the Civil Procedure Code. *Per* Tyrrell, J., that the plaintiffs being entitled to only one remedy in the former suit, the provisions of s. 43 were not applicable to the second suit. *Held* by the Full Bench that there was no mis-joinder of plaintiffs in the second suit. S. A. No. 1050 of 1879 (decided the 12th May, 1880, not reported) distinguished.—*Ram Sewak Singh and others v. Nakshed Singh*, I. L. R., 4 All. 261.

THE erroneous decision by a competent tribunal of a question of law directly or substantially in issue between the parties to a suit does not prevent a Court from deciding the same question, arising between the same parties in a subsequent suit, according to law. Persons of whatever sect are at liberty to erect buildings, and therein conduct public worship on their own land, provided they neither invade the right of property enjoyed by their neighbours, nor cause a public nuisance; and are also entitled to conduct religious processions through public streets, so that they do not interfere with the ordinary use of such streets by the public, and subject to such directions as the Magistrate may lawfully give to prevent obstruction of the thoroughfare or breaches of the public peace. In a suit in 1850 between the Tenkalais and Vadakalais, rival religions sects, represented by the plaintiffs and defendants respectively, the Vadakalais, having endeavoured to open a temple for public worship in a certain public street, were, by the decree of the Sadr Court, prohibited from erecting a temple or instituting public worship on the spot of ground objected to by the Tenkalais, and which lay within the range of the Tenkalais temple, *i.e.*, within the usual range of the processions conducted in connection with the temple worship. In 1879 the Vadakalais opened a temple for public worship on another site, their private property, in the same street. *Held* that a decree of the Sadr Court in the former suit was no bar to the action of the Vadakalais. — *Parthasaradi Ayyangar and other (Plaintiffs), Appellants, v. Chinnakrishna Ayyangar and others (Defendants), Respondents*, I. L. R., 5 Mad. 304.

THE plaintiff, mortgagee in possession of certain property, applied for the removal of an attachment placed on it by the defendant in execution of a decree against a third party. In default of payment of court-fees by the defendant the attachment was removed, but, in ignorance of this fact, the plaintiff's application was proceeded with, and ultimately rejected. The plaintiff then brought a suit for a declaration of his right, but it was dismissed, on the ground that the attachment has already been removed. Subsequently the defendant placed a second attachment on the property, which the plaintiff again applied to remove. The defendant contended that the plaintiff's application was barred by the proceeding on the first attachment. *Held* that the decision on the plaintiff's first application having no object existing on which to operate, the attachment having then been removed, it could not properly be regarded as *res judicata* at all, since no one was seriously interested in having it decided in a different way; and that, supposing submission to that decision on the part of the plaintiff for a certain time could have given it a final effect, there had, as a matter of fact, been no such submission, the plaintiff having done all that was incumbent on him to get the summary inquiry and orders replaced by a formal trial and judgment; and that there was nothing, therefore, in these proceedings disentitling the defendant to oppose the second attachment. *Held* also that the second attachment, after the first has been removed, was a new and distinct act, giving rise to a new cause of

action, or complaint, to the plaintiff, on which, in any case, he was entitled to a fresh enquiry and decision.—*Kashinath Morsheth v. Ramchandra Gopinath*, I. L. R., 7 Bom. 408.

B, who held a decree for money against I, caused certain property to be attached in execution of such decree as the property of his judgment-debtor. M, the wife of I, objected to such attachment, claiming such property as her own. Her objection was disallowed, and she consequently brought a suit against B to establish her right to such property. She died while that suit was pending, leaving by will such property to her sons. That suit proceeded in the names of her sons, who claimed such property under such will. The lower Courts only decided in that suit that such property belonged to M. and not to I, and it was therefore not liable to be sold in execution of B's decree against the latter. They did not consider the question whether M's sons were entitled to such property under the mother's will. In second appeal in that suit B contended that I, as an heir to M, was entitled to a fourth share of such property, and such share was liable to be sold in execution of such decree. M's sons did not contend before the High Court that they were entitled to the whole of such property under their mother's will to the exclusion of I. The High Court allowed B's contention. B brought a fourth share of such property to sale in execution of his decree, and purchased it himself. Thereupon M's sons sued him for such share, claiming it under their mother's will. *Held* that their mother's will was a matter which should have been made a ground of defence by M's sons in the course of the trial of the second appeal in the former suit between them and B, and that, not having been so made, it was *res judicata* in the sense of s. 13, explanation ii., Act X. of 1877.—*Sultan Ahmad and others (Plaintiffs) v. Maula Baksh (Defendant)*, I. L. R., 4 All. 21.

A SUBORDINATE Judge, to whom an appeal is transferred under the Bengal Civil Courts Act (VI. of 1871), has not the power to dispose of it in the manner provided by ss. 206, 207, and 208 of the N. W. P. Rent Act, 1881: the District Judge alone has the power to dispose of appeals in that manner. *Ram Prasad v. Rai Kishan* (I. L. R., 6 All. 36) followed. The plaintiffs, who claimed to be tenants of certain land under a lease from the zamindar, alleging that the defendant was their sub-tenant, under s. 36 of the N. W. P. Rent Act, 1881, caused a notice of ejectment to be served upon the latter under the provisions of that Act. The defendant did not make an application under that Act contesting his liability to be ejected, and the plaintiffs applied under ss. 40 and 95 (f) of that Act for assistance to eject him. The Revenue Court trying this application rejected it on the ground that the defendant was not a sub-tenant of the plaintiffs, but a co-sharer in their tenancy. The plaintiffs thereupon sued the defendant in the Civil Court for a declaration that the latter was not a partner with them in the lease, and for possession of the land by his ejectment therefrom. *Held* that the relief sought in the suit by the plaintiffs was not one which a Revenue Court could give under any of the clauses of s. 95 of the Rent Act, which presupposes an admitted relation of landlord and tenant; and therefore the determination by the Revenue Court of the plaintiff's application for ejectment of the defendant was not the decision of a Court competent to try the suit, and was no bar to its maintenance in a Civil Court, within the principle of s. 13 of the Civil Procedure Code.—*Lodhi Singh v. Ishri Singh*, I. L. R., 6 All. 295.

THE plaintiff sued to recover possession of certain houses and grounds as belonging to his zamindari, setting forth that the premises in question had been occupied by his paternal grandmother, on whose death the defendants had taken wrongful possession. The defendants claimed to be legally entitled to the premises in question, and contended that the plaintiff's suit was barred under this section by reason that the plaintiff had already, during his grandmother's lifetime, brought a suit against her and the defendant's father, as a co-defendant, to establish his right to the same premises, which suit has been dismissed. The defendants also pleaded limitation. It appeared that in the former suit the relief sought by the plaintiff was substantially to restrain his grandmother from acts of waste in alienating property which had belonged to her deceased husband by assigning it to her co-defendant; but that, as regards the property now claimed, although it was mentioned in the plaint, no charge had been made that she had assigned it, or intended to assign it, to her

co-defendant, nor any allegation to show that the co-defendant had any interest in it. *Held*, reversing the decisions of the lower Courts, that, under the circumstances, the decision in the former suit was not a decision in a suit between the same parties or parties under whom they claimed, and that the cause of action in the present suit was not determined in the former suit. *Held* also that the defendant's plea of limitation could not be determined without a finding as to whether the plaintiff's grandmother, who died within the period of limitation, had held the premises with the plaintiff's leave, or as a trespasser.—*Zamindar of Pittapuram v. Proprietors of Kolanka*, I. L. R., 2 Mad. 23.

CERTAIN immoveable property was mortgaged to R, and then sold to N. It was then brought to sale in execution of a decree against N, and was purchased by H. The balance of the sale-proceeds, after satisfaction of that decree, was paid to N. Under the terms of the mortgage to R, interest on the principal amount was payable annually, and its payment was charged on the property as well as the payment of the principal amount. The mortgagors having failed to pay the interest annually, R in 1875 sued them and N and H to recover the interest due. It was decided in that suit that N was primarily and personally liable for the interest then due on the mortgage, as he had received the sale-proceeds of the property, and that the property was only liable in case he failed to satisfy the claim. N subsequently paid into Court the sale-proceeds he had received, and R was paid the same. In 1878 R again sued the same persons for interest, and again N was declared primarily and personally liable, on the ground that he had not at once made over the sale-proceeds to R. In 1880 R sued the same persons to recover the principal amount and interest due on the mortgage by the sale of the mortgaged property. *Held* that, whatever might have been the rights and relations of the parties, so long as any portion of the sale-proceeds remained with N, their position towards him assumed an entirely different character when once he had discharged himself of those moneys, and with this change in the situation the "*ratio decidendi*" of the suits of 1875 and 1878 no longer existed, and therefore the decisions in those suits did not preclude R from bringing a suit to recover the principal and interest due on his mortgage from the mortgaged property.—*Ratan Rai v. Hanuman Das*, I. L. R., 5 All. 118.

H, THE proprietor of one-third share of a certain undivided estate, made a gift of such share to P. He subsequently, in February, 1875, gave a mortgage of such share, in his capacity as P's guardian, to N and S, the two other co-sharers of such estate. In March, 1878, P, having attained his age of majority, brought a suit, as a co-sharer of such estate, under such gift, against N and S for possession of certain land appertaining to such estate, on the ground that they were using such land as if they were the sole proprietors thereof. The lower Appellate Court, observing that such land was the property of the three co-sharers, that the mortgage of P's rights to N and S did not affect those rights as such, and that N and S were not justified in using such land, as they were the exclusive proprietors thereof, gave P a decree for possession of one-third share of such land. N and S appealed to the High Court on the ground that P should not have been awarded possession, as they were in possession of such land as mortgagees. The High Court remanded the case for the determination of the issue thus raised by N and S; and the lower Appellate Court found that N and S were in possession of P's share of such estate as mortgagees under the mortgage made by H above referred to, and of such land as such. P did not take any objection to this finding; and it was adopted by the High Court, and embodied in its final decree. In October, 1879, P sued N for possession of his share in such estate, claiming under the gift from H, and alleging that the mortgage of such share by H to N was invalid. *Held* that, inasmuch as such mortgage was matter substantially in issue in the former suit, the matter in issue in the second suit was *res judicata* under explanations i. and ii., s. 13 of Act X of 1877.—*Nirman Singh (Defendant) v. Phulman Singh (Plaintiff)*, I. L. R., 4 All. 65.

IN 1864 the obligee of an instalment-bond, in which certain immoveable property was hypothecated as collateral security for the payment of the instalment, brought a suit upon such bond "against Z and A (the obligors) and the property hypothecated in the bond, defendants," claiming to recover instalments which were due and unpaid, and a declaration of his right to recover instalments which were not due as they fell due. He obtained a decree in such suit for "the amount claimed" against

the "two defendants." It was also provided in such decree that, "until the satisfaction of the entire amount of the bond, the plaintiff can realize the amount of each instalment by executing this decree." The obligee applied in execution of such decree to recover, by the sale of such property, which had passed into the hands of third parties after the passing of such decree, instalments which had become due after the passing of such decree and had not been paid. Such execution having been refused on the ground that such decree was a money-decree, the obligee brought a second suit upon such bond to recover such instalments by the enforcement of the lien therein created on such property. *Held* that, although the enforcement of such lien was claimed in the former suit, yet, inasmuch as it was very questionable whether the Court was competent to grant the second relief claimed in that suit, *viz.*, a declaration of right to recover instalments which were not due in execution of a decree for instalments which were due, and the claim in the second suit was not the same as that in the former suit, the plaintiff asking for instalments said to be actually due, and not for a declaratory decree for instalments not due, the second suit was not barred by s. 13 of Act X. of 1877.—*Umrao Lal and another (Defendants) v. Behari Sing and another (Plaintiffs)*, I. L. R., 3 All. 297.

M sued R in the Court of the Munsif for a bond, alleging that he had satisfied the bond-debt, and for a certain sum which he alleged had been paid by him to R in excess of the bond-debt. On the 24th November, 1875, the Munsif, having taken an account, and found that Rs. 188-7-4 of the bond-debt were still due, made a decree dismissing the suit. R appealed to the Subordinate Judge, who, on the 16th September, 1876, finding that Rs. 520-2-2 of the bond-debt were still due, affirmed the Munsif's decree. M appealed to the High Court on the ground that an appeal by R did not lie to the Subordinate Judge, as R was not aggrieved by the Munsif's decree. The Division Bench before which the appeal came, on the 10th August, 1877, holding that R was not competent to appeal to the Subordinate Judge, set aside the proceedings of the Subordinate Judge. In deciding the case the Division Bench made certain observations to the effect that the account between the parties was not finally settled, but might be taken again in a fresh suit. In November, 1877, M instituted a fresh suit against R to recover the bond on payment of Rs. 188-7-4, the sum found by the Munsif in the former suit to be due by him to R. *Held* on the question whether the finding of the Munsif in the former suit was final and conclusive between the parties, or the account might be again taken, that that finding being a finding on a matter directly and substantially in issue in the former suit, which was heard and finally decided by the Munsif, was final and conclusive between the parties, and the account could not be again taken. *Held* also that the observations of the Division Bench in the former suit were mere "*obiter dicta*," which did not bind the Courts disposing of the fresh suit.—*Mohun Lal (Plaintiff) v. Ram Dayal and another (Defendants)*, I. L. R., 2 All. 843.

The jurisdiction of a Small Cause Court is not ousted in a suit for damages for carrying away the produce of certain land when the defendant sets up title to the land in answer to the claim. S. 586 of the Code of Civil Procedure precludes a second appeal in a suit for damages under Rs. 500, although the suit has been instituted in the District Munsif's Court and not in a Court of Small Causes, and although a question of title has been raised by the defendant and decided. *Per* Turner, C.J.—When a suit is brought in a form in which it is cognizable by a Small Cause Court under Act XI. of 1865, the Court cannot decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. *Per* Muttasámi Ayyar, J.—The question, what is a suit of the nature cognizable in Courts of Small Causes within the meaning of s. 586 of the Civil Procedure Code, has reference to the mode of adjudication, and not to the *forum*; and the fact that the suit is instituted in the District Munsif's Court, and not in a Court of summary jurisdiction, makes no difference for the purposes of that section. If the matter adjudicated on in a suit is only incidentally in issue or cognizable, the adjudication is final, whether by a Court of concurrent or limited jurisdiction, only for the purpose and object of that suit. *Per* Innes, J.—The decree of a Small Cause Court in a case where a question of title is raised incidentally is no bar to a suit upon the title under s. 13, expl. 2, of the Civil Procedure

Code, because the Small Cause Court is not competent to pass a decree upon the title.—*Manappa Mudali (Plaintiff), Appellant, v. S. T. McCarthy (First Defendant), Respondent, I. L. R., 3 Mad. 192.*

IN 1856, V, a member of an undivided Hindú family, sued the defendants, and obtained a decree for the redemption of certain immovable property, but the decree was never executed. At the date of that suit, V was the manager of the family, consisting of himself and the plaintiff N, who was then a minor. The decree did not provide, for the foreclosure of the mortgage in the event of V failing to redeem. In 1878, N brought another suit to redeem the same property. The lower Court held that as the former decree did not direct foreclosure, the relation of mortgagor and mortgagee continued between the parties, and that the plaintiff's suit was not barred by the former decree. The defendants appealed. *Held* (Pinhey, J., *dissentiente*), reversing the decree of the lower Court, that the plaintiff's suit was barred. A decree for redemption on the default of the decree-holder to pay the money declared to be due within the time fixed by the decree, or, if none be fixed, within the time allowed by the law for the execution of the decree, operates as a judgment of foreclosure, and debars the mortgagor from afterwards bringing a second suit to redeem the same property. A Hindú family is regarded as a corporation whose interests are necessarily centred in the manager, the presumption being that the manager is acting for the family, unless the contrary is shown. Before the introduction of the Civil Procedure Code this was so equally with regard to litigation as to other transactions, and it was not obligatory, or even customary, for a Hindú manager to set forth that he sued in a representative character (as now required by the Code, s. 50), or to add the co-owners as parties to the suit (as required by English law). V's suit, therefore, being brought in 1856, and no fraud or collusion being alleged, bound the present plaintiff, though then a minor, and he could not now bring a second suit on the same cause of action.—*Gan Sávant Bál Sávant v. Náráyan Dhond Sávant, I. L. R., 7 Bom. 467.*

R, ON THE 30th December, 1870, obtained an *ex-parte* decree against D, in execution of which he attached properties X and Y on the 4th January, 1871. D applied for a re-hearing, which was granted; and on the 30th of December, 1871, a decree was again passed against D, in execution of which the same properties were attached on the 9th of August, 1872, and purchased at the execution-sale on the 1st August, 1874, by R. On the 14th February, 1871, D had executed a solehnáma and mortgage in favour of G, pledging among other properties X and Y as security for a loan made to him by G. D having made default in payment, G obtained a decree against him in terms of the solehnáma on the 28th February, 1871. Subsequently, D granted another mortgage of the same properties in favour of G. G sold his decree and mortgage to the plaintiff, who in execution of the decree attached properties X and Y. In these execution-proceedings R brought forward the fact of his purchase of the same properties in August, 1874, and his claim was allowed, and the properties X and Y released from attachment on the 4th March, 1876. The plaintiffs had, on the 8th March, 1872, obtained a mortgage from D, on which they had obtained a decree on the 28th September, 1874, in execution of which they had attached X and Y; but on R claiming them under his purchase in August, 1874, an order was made on the 10th April, 1875, releasing X and Y from attachment; and in a suit by the plaintiff to set aside that order, they failed as to properties X and Y, on the ground that those properties were not included in the mortgage of March, 1872. In a subsequent suit brought by the plaintiffs against R and D, to set aside the order of the 4th March, 1876, and to have X and Y declared liable to be sold under the decree of the 28th February, 1871, *held* that the suit was not barred under s. 2 of Act VIII. of 1859 by the decree in the previous suit, nor was it barred by s. 7 of the same Act. *Held* also that the purchase by R in August, 1874, was subject to the mortgage to G of the 14th February, 1871.—*Radha Nath Kundu (Defendant) v. Land Mortgage Bank of India, Limited, and others (Plaintiffs), I. L. R., 6 Cal. 559.*

THE decision by a competent Court, that an application for the execution of a decree is barred by limitation, has the effect of *res judicata*; and although such decision may be erroneous, yet so long as it remains unreversed in appeal it is valid and binding, and the question cannot be re-opened. A decision, that an application for execution is not time-barred, has a similar effect. On the 15th April, 1868, the plaintiff applied for the execution of a decree held by him against the defendant,

and certain houses were thereupon attached. In April, 1869, the attachment was raised on the intervention of a third person. The plaintiff then brought a suit to establish his right to attach the houses, and obtained a decree on the 28th February, 1871. An appeal was made, and the suit was finally decided in the plaintiff's favour in April, 1873. After the plaintiff had obtained his original decree, and while the appeal was pending, he applied for the sale of the houses in execution on the 30th November, 1871, and subsequently made three other applications within three years of each other, the last of which was dated the 30th October, 1876. The Court rejected this application on the 28th November, 1876, on the ground that the execution of the decree was barred, as more than three years had elapsed between the first and second applications (i.e., the applications of the 15th April, 1868, and 30th November, 1871). The plaintiff appealed against the order; but his appeal was rejected, because he had failed to produce with it a copy of the order appealed against. The plaintiff took no further steps in that proceeding, but made a fresh application for execution on the 10th August, 1878. The Subordinate Judge rejected it, on the ground that the execution was barred, the matter being *res judicata*. In appeal, the District Judge reversed that order, and allowed execution. On appeal to the High Court, *held* on the authority of *Mungul Pershad Dicit v. Grija Kant Lahiri Chowdry* (L. R. 8 Ind. Ap. 123) that the rules of *res judicata* applied, and that the application of the 30th November, 1871, was time-barred, and, *a fortiori*, every subsequent application was barred. *Semle*.—A proceeding in execution is a proceeding which terminates in a decree as defined by s. 244 of the Civil Procedure Code (Act X. of 1877), and is, therefore, a suit within the meaning of the Code.—*Manjunáth Badrábhat* (Original Defendant), Appellant, *v.* *Venkatesh Govind Shánbhog* (Original Plaintiff), Respondent, I. L. R., 6 Bom. 54.

THE three defendants, G, R, and K, and their brother M, the grandfather of the plaintiff, were members of one family, possessing undivided ancestral property consisting of the villages of B, P, and S, the two former being situated in the Poona Zilla, and the latter in the Sátára Zilla. In 1866 the three defendants (each in a separate suit) sued M in the Poona Courts for partition of the villages of B and P. They in their plaints alluded to the village of S, stating that it was their own, and not subject to partition. M in his answer contented himself with denying the right to partition of the villages of B and P, and made no claim, in the alternative, to a share in the ownership of S. The plaintiff, the grandson of M, now sued the defendants in the Sátára Courts for partition of the village of S, contending that he was not precluded from so doing by the former proceedings in the Poona Courts. *Held* that the plaintiff's claim was *res judicata*, and that his suit was concluded under the provisions of the Civil Procedure Code (Act X. of 1877), s. 13, explns. i. and ii. A member of an undivided family, suing his co-parceners for partition of family property, is bound to bring into hotchpot any undivided property in his own possession, in order that there may be a complete and final partition, and cannot claim to withhold any such property on the ground that it is situated within another jurisdiction. That being so, the plaintiff's grandfather M having neglected in the previous suit to make the exception of the village of S a ground of defence, the judgment which followed involved the decision of every claim of title upon the cause of action, and must be taken between the parties as amounting to a positive adjudication of all such claims, including the claim to the village of S. No doubt, the rule that every partition-suit shall embrace all the joint family property has been held to be subject to certain qualifications, as, for instance, where different portions of it lie in different jurisdictions, or where a portion is not available for actual partition as being in the possession of a mortgagee; but there is no authority for the proposition that a member, who sues for partition of property in the hands of the defendants, can refuse to bring into hotchpot any undivided property held by himself, on the ground that it is situated within another jurisdiction. *Subbá Rau v. Rámá Rau* (3 Mad. H. C. Rep. 376) referred to and distinguished.—*Hari Náráyan Brahme v. Ganpatráv Dáji*, I. L. R., 7 Bom. 272.

L WAS the owner of a four-anna share in a village. On the 1st March, 1880, his childless widow R, and his nephew B, who had separated from his two brothers, and lived for some years with both L and R, sold to S one-third of the four-anna share. The brothers of B sued the vendors and the vendee to enforce a right of

pre-emption, alleging that they, as well as B, had acquired and entered into exclusive possession of the estate of L as his heirs. In the second appeal in this suit the High Court held that, as it was proved that the four-anna share was L's separate estate, and R had succeeded to it, and was in possession of it, and thus the plaintiffs had not established a title to, or acquired possession of, any part of the share, the plaintiffs were not in a position to assert a preferential claim to purchase the property in dispute. The plaintiffs also pleaded that the question of the right and title asserted by them as the actual heirs of L should have been tried and determined in the suit; but the High Court rejected this plea on the ground that the suit had been based merely on the allegation of *de facto* possession, and that their claim was to obtain by purchase one-third share only, and not for any remedy in respect of their right to possession by inheritance of the entire four-anna estate. Subsequently to this decision, the same plaintiffs, alleging equal rights with B as reversionary heirs of L, sued the same defendants for a declaration of the incompetence of R, the widow, to alienate the property, and that the sale-deed might be declared, as against them, null and of no effect. The cause of action was stated to be the execution, on the 1st March, 1880, of the deed of sale. *Held* that the plea of *res judicata* failed. The matter now substantially in issue between the parties, *viz.*, the presumptive title of the plaintiffs to possession of the property, had not been "heard and finally decided" in the sense of s. 13 of the Civil Procedure Code. Such title was not "alleged and denied" by the parties in that suit, within explanation i, s. 13. It was not matter which "might and ought" to have been made the ground of attack in the former suit, within explanation ii. The law does not require a plaintiff at once to assert all his titles to property, or to be thereafter estopped from advancing them. A plaintiff may, with the leave of the Court (s. 44, Civil Procedure Code), join causes of action; but he is nowhere compelled to do so. The cause of action in the second suit, although the date of its accrual was the same, was separate and distinct from the cause of action asserted in the previous suit.—*Sheo Ratan Singh v. Sheosahai Misr*, I. L. R., 6 All. 358.

A HINDU of the Southern Maratha country, having two sons undivided from him, died in 1871, leaving a will disposing of ancestral estate substantially in favour of his second son, excluding the elder, who claimed his share in this suit. In 1861, a suit brought by this elder son against his father and brother to obtain a declaration of his right to a partition of the ancestral estate was dismissed, on the ground that he had no right in his father's lifetime to compel a partition of moveables; and that as to the immoveables the claim failed, because they were situate beyond the jurisdiction of the Court. *Held*, first, that this suit was not barred under Act VIII. of 1859, s. 2; the proceeding of 1861 not having amounted to an adjudication between the brothers as to their rights in the estate arising on their father's death. Secondly, that the suit was not barred under the Limitation Act, XIV. of 1859, s. 1, cl. 13. As to the immoveables, setting aside the fact that the plaintiff had remained in possession of one of the houses of the family, which had been treated by the father as continuing to be part of the joint property, the decision of 1861, based as to the immoveables on the absence of jurisdiction to declare partition of them, caused this part of the claim to fall under the provisions of Act XIV. of 1859, s. 14. As to the immoveables, assuming that they could, on the question of limitation, be treated as distinct from the moveables, and that no payment had been made within twelve years before this suit by the ancestral banking firm to the plaintiff, the adjudication of 1861, whether in law correct or incorrect, had been that the elder son could not assert his rights in the moveables until his father's death. The defendant in this suit, who had taken the benefit of that judgment, could not now insist that it did not suspend the running of limitation on the ground that his brothers might have appealed from it if erroneous. So far, also, as the father's interest was concerned, the succession only opened on his death. Thirdly, it having been contended that as a father and his sons were during his life co-parceners in the family estate, one of such co-parceners being able, according to the decision of the Courts, by act *inter vivos*, to make an alienation of his undivided shares binding on the others, it followed that the father might dispose by will of his one-third share. *Held* that under the Mitāksharā law, as received in Bombay, the father could not dispose of his one-third share by will. The doctrine of the alienability by a co-parcener of his undivided share, without the consent of his co-sharers,

should not be extended, in the above manner, beyond the decided cases. The Bombay Court had ruled that a co-parcener could not, without his co-sharers' consent, either give or devise his share, and that the alienation must be for value. The Madras Court had ruled that although a co-parcener could alienate his share by gift, that right was itself founded on the right to partition, and died with the co-parcener, the title of other co-sharers vesting in them by survivorship at the moment of his death. Without a decision as to which of these conflicting views, in regard to alienation by gift, was correct, the principles upon which the Madras Court had decided against the power of alienation by will were held to be sound and sufficient to support that decision.—*Lashman Dada Naik (Original Defendant), Appellant v. Ramchander Dada Naik (Original Plaintiff), Respondent*, I. L. R., 5 Bom. 48.

M.S.C.C. When foreign judgment no bar to suit in British India.

14. No foreign judgment shall operate as a bar to a suit in British India—

- (a) if it has not been given on the merits of the case:
- (b) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India:
- (c) if it is, in the opinion of the Court before which it is produced, contrary to natural justice:
- (d) if it has been obtained by fraud:
- (e) if it sustains a claim founded on a breach of any law in force in British India.

A SUIT upon a foreign judgment is not cognizable by a Court of Small Causes established under Act XI. of 1865.—*Krishnan v. Pilo*, I. L. R., 6 Mad. 191.

THE judgment of a foreign Court, obtained on a decree of a Court in British India, is no bar to the execution of the original decree.—*Fakurudeen Mahomed Assan v. The Official Trustee of Bengal*, I. L. R., 7 Cal. 82.

AN EX-PARTE judgment of a French Court against a native of British India, not residing in French territory, upon a cause of action which arose in British India, imposes no duty on the defendant to pay the amount decreed so as to bar a suit in British India.—*Hinde and Co. v. Ponnath Brayan and others*, I. L. R., 4 Mad. 359.

K SUED C, who resided in British India, upon a bond executed by C in favour of K within the territory of P, a Native State, and obtained a decree. Having obtained satisfaction in part, K sued C upon the judgment of the Court of P in a British Indian Court at T. Held, reversing the decrees of the Lower Courts, that the Court at P had jurisdiction, and that K could sue upon the judgment of that Court in the Court at T.—*Kaliyugam v. Chokalinga*, I. L. R., 7 Mad. 105.

CHAPTER II.

OF THE PLACE OF SUING.

M.S.C.C. Court in which suit to be instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

FOR the purpose of determining the question of jurisdiction the valuation of a suit should be computed according to the market-value of the subject-matter of the suit, and not according to the special rules application to valuation fixed in Act VII. of 1870.—*Kalabin Bhiwaji v. Vishram Mawaji*, I. L. R., 1 Bom. 543.

THE valuation of suits, for the purpose of jurisdiction, is perfectly distinct from their valuation for the fiscal purpose of court-fees. Therefore Court-fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction.—*Dayachand Nemchand v. Hemchand Dharachand*, I. L. R., 4 Bom. 515 (F. B.).

WHERE a person has preferred a claim to property attached in execution of a decree on the ground that such property is not liable to such attachment, and an order is passed against him, and he sues to establish his right to such property, held that the value of the subject-matter in dispute in such suit, for the purposes of jurisdiction, will be the amount of such decree.—*Galzaree Lal v. Jadaun Rai*, I. L. R., 2 All. 799.

SECTION 6 of Act VIII. of 1859 (corresponding with s. 15 of Act X. of 1877), which provides that "every suit shall be instituted in the Court of the lowest grade competent to try it," does not affect the jurisdiction of a Subordinate Judge to try a suit wherein several causes of action are joined, the cumulative value of which is over Rs. 1,000; notwithstanding that, if separate suits had been brought on these several causes, such suits must have been instituted in the Court of the Munsif.—*Mashoolah Khan v. Ram Lall Agurwallah*, I. L. R., 6 Cal. 6.

A SUIT was brought for a dissolution of partnership between plaintiff and 1st defendant, and for an account as between them. It was alleged in the plaint that plaintiff and 1st defendant entered into partnership in 1864 to work a jungle in the North Arcot district which had been leased to plaintiff for three years. That 4th defendant was subsequently admitted a partner, and that the contract was carried on under the style of R T and Co. That in March, 1867, 4th defendant took up a contract in Madras, and another general partnership was established, of which plaintiff and 1st defendant were members; that the funds of the 1st firm became incorporated in the 2nd firm, which was styled K, T, and K, and that this firm undertook several contracts in Madras and Chingleput. Finally, that the cause of action was the refusal of 1st defendant to account, and accrued in North Arcot district, where all the defendants resided permanently. The District Judge dismissed the suit on the ground that, under s. 265 of the Indian Contract Act, he had no jurisdiction. *Held*, on appeal, that the District Court of North Arcot had jurisdiction, as the defendants were resident within the district. That the provision in the Contract Act is permissive, and does not prohibit a suit elsewhere than at the place where the partnership was carried on if a sufficient ground of jurisdiction exists.—*Javali Ramasami (Plaintiff), Appellant, v. Sathambakum Theruvengadasami and three others (Defendants)*, Respondents, I. L. R., 1 Mad. 340.

A TESTATOR bequeathed the income of his "altamgha," "zamindári," and "thikadari" lands, situate in the districts of Delhi, Hissar, and Bulandshahr, to his five sons in equal shares, and to their issue; directing that one of the sharers should manage the estate, accounting yearly to the others, and receiving ten per cent. per annum. The lands described as "altamgha" were in the Bulandshahr district, within the local limits of the jurisdiction of the Civil Court of Meerut; and on them an establishment was maintained at the expense of the estate. At Hansi, in Hissar, there was also a residence belonging to the estate, and another at Delhi. The will directed that the brothers might, if they liked, live together at Bilaspur, and build houses "with mutual consent in the altamgha and zamindári," also that certain memorials of the testator were to be retained by the manager at Bilaspur. At this place the manager used to stay occasionally, though travelling, for the most part, about the estate during the cold weather. No particular place for rendering the yearly accounts was fixed, either by contract or in practice; but they were rendered by the manager to the sharers at different times and in different places, including Delhi, Bilaspur, and Hansi; at which last place, it being the sadar station of Hissar, the older records of the estate were kept. When this suit was brought, the manager was actually residing at the hill station of Mussoorie, in the Saharanpur district, for the hot weather; and in his answer he stated that the unsettled accounts were open to inspection by the sharers at Bilaspur. *Held* that a person might "dwell" within the meaning of Act VIII. of 1859, s. 5, at more places than one; and that, on the evidence, this manager so dwelt at Bilaspur as to make him subject to the jurisdiction of the Meerut Court in this suit. It was, accordingly, not necessary to consider whether he was or was not also subject to that Court's jurisdiction by reason of the cause of action having arisen within its local limits; nor was it necessary to consider whether he had or had not such a dwelling place at Hansi as would have rendered him subject to the jurisdiction of the Hissar (Panjáb) Courts. Other questions disposed of in the Court of first instance having remained undecided by the High Court, which dealt with the question of jurisdiction alone, were considered

with reference to whether there had or had not been shown any good reason for reversing or varying the order of the original Court. Among these, the question whether the manager's commission was to be calculated on the gross rental of the estate, or on the income divisible among the sharers, was *held* to be settled by the indication of the latter mode of calculation in the will.—*Sophia Orde (Plaintiff) v. Alexander Skinner (Defendant)*, 1. L. R., 3 All. 91.

M.S.C.C. Suits to be instituted where subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits

- (a) for the recovery of immoveable property,
- (b) for the partition of immoveable property,
- (c) for the foreclosure or redemption of a mortgage of immoveable property,
- (d) for the determination of any other right to, or interest in, immoveable property,
- (e) for compensation for wrong to immoveable property,
- (f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property, held by or on behalf of the defendant, may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section “property” means property situate in British India.

In a suit for foreclosure or sale of immoveable property, it appeared that the mortgagee had conveyed the mortgaged premises to trustees. The summons to one of the trustees was personally served upon his duly constituted agent, who was at the time of service in charge of the mortgaged premises. *Held* that the service was sufficient, the suit being one to obtain “relief respecting immoveable property” within the meaning of s. 16 of Act XIV. of 1882.—*Michael v. Ameena Bibi*, 1. L. R., 9 Cal. 733.

M.S.C.C. Suits to be instituted where defendants reside or cause of action arose.

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the cause of action arises, or
- (b) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain ; or
- (c) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain : provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

(a.) A is a tradesman in Calcutta. B carries on business in Dehli. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Dehli, where B carries on business.

(b.) A resides at Simla, B at Calcutta, and C at Dehli. A, B, and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Dehli, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

WHERE the cause of action occurs in the jurisdiction of a Court other than that in which the suit is brought, the plaintiff must, under the provision of s. 17, Act X. of 1877, show that the defendant, at the time of the commencement of the suit, actually and voluntarily resided or carried on business, or personally worked for gain, within the jurisdiction of the Court in which the suit was brought.—*Mudho Soodun Chowdhry (Defendant), Appellant, v. S. Cochrane (Plaintiff), Respondent*, I. L. R., 6 Cal. 417.

WHERE a promissory note is executed in one district, and it is agreed that the amount of the note shall be paid in another, the Courts of the latter district have jurisdiction to entertain a suit on the note. The illustrations to s. 17 of the Code of Civil Procedure afford no safe guide as to what is meant in the Code by the term 'cause of action.' *Gopi Krishna Gossami v. Nil Komul Bauerjee* (13 B. L. R. 451; S. C., 22 W. R. 79), *Mahomed Abdul Kadar v. E. I. Ry. Co.* (I. L. R., 1 Mad. 377), and *Vaughan v. Weldon* (L. R., 10 C. P. 48) approved—*Laljee Lall v. Hardey Narain*, I. L. R., 9 Cal. 105.

THE expression "cause of action," as used in s. 17 of the Civil Procedure Code, does not mean whole cause of action, but includes material part of the cause of action. In a suit for compensation for breach of a contract, the making of the contract is a material part of the cause of action. *Held*, therefore, where a contract was made at C, and broken at A, that the Court at C had jurisdiction to try the suit for compensation for the breach of such contract. *Llewellyn v. Chunni Lal* (I. L. R., 4 All. 423) and *Gopikrishna Gossami v. Nilkomul Banerjee* (13 B. L. R. 461) followed. *DeSouza v. Coles* (3 Mad. H. C. Rep. 384) and *Jumoonah Pershad v. Zaibunnissa* (5 C. L. R. 268) dissented from.—*Bishunath v. Ilahi Bakhsh*, I. L. R., 5 All. 277.

C AND L entered into an agreement at a place in the Saran district, in which the latter resided and carried on business, whereby C promised to sell and deliver to L at a place in the Saran district certain goods, and L promised to pay for such goods on delivery "by approved draft on Calcutta or Cawnpore (where C carried on business) payable thirty days after the receipt of the goods or by Government currency notes." C delivered the goods according to his promise, but L did not pay for the same, and C therefore sued L for the price of the goods, suing him at Cawnpore. *Held* that the "cause of action," within the meaning of s. 17 of the Civil Procedure Code, was L's breach of his promise to pay for the goods; that the parties intended that payment should be made at Cawnpore, and the cause of action therefore arose there; and that therefore the suit had been properly instituted there.—*Llewellyn v. Chunni Lal* and another, I. L. R., 4 All. 423.

- M.S.C.C. 18.** In suits for compensation for wrong done to person or move-
 Suits for compensation for wrongs to person or moveables. able property, if the wrong was done within the local limits of the jurisdiction of one Court, and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may, at his option, sue in either of the said Courts.

Illustrations.

(a.) A, residing in Dehli, beats B in Calcutta. B may sue A either in Calcutta or in Dehli.

(b.) A, residing in Dehli, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Dehli.

(c.) A, travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue the Company either at Howrah or at Allahabad.

- M.S.C.C. 19.** If the suit be to obtain relief respecting, or compensation for
 Suits for immoveable property situate in single district, but within jurisdictions of different Courts. wrong to, immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate; provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

Suit for immoveable property situate in different districts.
 UNDER Act X. of 1877, s. 19, it is not necessary to obtain the leave of the Court under cl. 12 of the Charter to sue in respect of immoveable property situate partly within and partly without the ordinary original civil jurisdiction of the High Court.—*Narain Singh v. Ram Lal Mookerjee*, 1 L. R., 3 Cal. 370.

A suit was instituted on a mortgage of a single revenue-paying estate in the Court of the Subordinate Judge of the district of Backergunge, under the provisions of s. 19, Act X. of 1877, and a decree was obtained for the sale of the mortgaged property. On an application for execution of the decree to the Court which passed it *held* that the Court was competent to order a sale of the whole of the mortgaged property, though only a portion of it was situated in the district of Backergunge. *K. H. Prounno Bose v. Dinonath Mullick* (11 B. L. R. 56; S. C., 19 W. R. 431) followed and cited.—*Shunroop Chunder Gooch v. Ameerunnissa Khatoon*, 1 L. R., 8 Cal. 703.

A, THE mortgagee, under a bond, of properties situated in districts B and C, sued in the B Court on his bond, and obtained a decree for the mortgage-money and interest, with a declaration that the decree should be satisfied by sale of all the mortgaged property. A had not obtained the permission of the High Court under s. 12, Act VIII. of 1859, which was necessary to enable him to proceed against the property in the C district. Having attached and sold all properties comprised in his decree situate within the jurisdiction of the B Court, A, under a certificate issued by such Court, obtained an order from the C Court attaching lands included in his decree situate in that district. D intervened, on the ground that he had purchased the same property in execution of another decree of the C Court against the same judgment-debtor, and the property was released from attachment. A then sued D and the mortgagor to enforce his mortgage-lien against the property in the C district. *Held* that the B Court had jurisdiction to give A a decree for the amount of

the mortgage-money and interest, though it had not power to enforce the decree against the property in the C district ; that the only effect of the decree was to change the nature of the original debt, which was a bond-debt, into a judgment-debt for the mortgage-money and interest ; and that though A could not enforce his lien against the property in the C district under the decree of the B Court, yet as that property had been sold to a third person, D, he was at liberty to sue D to establish his lien for the mortgage-debt and interest.—*Bolakee Lal (Plaintiff) v. Thakur Pertam Singh and others (Defendants)*, I. L. R., 5 Cal 928.

20. If a suit which may be instituted in more than one Court is M.S.C.O.

Power to stay proceedings where all defendants do not reside within jurisdiction.

instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly ;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Every such application shall be made at the earliest possible oppor-

Application when to be made. tunity, and in all cases before the issues are settled ; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

A, who was employed by B and Co. as their agent at Calicut, instituted a suit for the balance of an account against his principals in the Court of the Subordinate Judge there in July, 1878. In December of the same year B and Co. instituted the present suit against A for an account and for damages caused by his alleged negligence. *Held* that as in both suits practically the same issues were triable, A was entitled as having been first to institute his suit to proceed in the Court in which he had chosen to bring his suit, and to have the other suit stayed, but without prejudice to the right of the plaintiffs in the latter suit to institute a cross-claim in the Calicut Court.—*Meekjee Khetsee and others (Plaintiffs) v. Kesowjee Devachand (Defendant)*, 4 Cal. Law Rep. 282.

21. Where the Court, under section 20, stays proceedings, and the M.S.C.O.

Remission of court-fee where suit instituted in another Court.

plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any court-fee ; provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.

22. Where a suit may be instituted in more Courts than one, and

Procedure where Courts in which suit may be instituted subordinate to same Appellate Court.

such Courts are subordinate to the same Appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly ; and the Appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

23. Where such Courts are subordinate to different Appellate Courts,

Procedure where they are but are subordinate to the same High Court, not so subordinate. any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections (if any) filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections (if any) of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

THE fact that portion of the property, the whole of which is sued for in the Court of the Munsif of (a), is of less value than the remaining portion, which is within the jurisdiction of the Munsif of (b), is no sufficient ground for an application under the Code of Civil Procedure, s. 23, for a transfer to the latter Court. A party applying under s. 23, Act X. of 1877, must first of all give notice to the other side. The application should then be received by the Munsif, and transmitted to the High Court through the District Court.—*Musammat Purrunjoti and another (Plaintiffs) v. Deon Pandaya and another (Defendants)*, 2 Cal. Law Rep. 352.

S. 23 of Act XIV. of 1882 is only intended to provide for those cases where, on the ground of expense or convenience or some other good reason, the Court thinks that the place of trial ought to be changed. Parties desirous of obtaining the transfer of a case from one forum to another ought clearly to explain to the Court by petition and affidavit what is the nature of the claim and defence; they should further state what are the issues and the evidence required, and then satisfy the Court that, either on the ground of expense or convenience or otherwise, the place of trial ought to be changed.—*Khatija Bibi v. Taruk Chunder Dutt*, I. L. R., 9 Cal. 980.

24. Where such Courts are subordinate to different High Courts,

Procedure where they are any defendant may, after giving notice in subordinate to different writing to the other parties of his intention to High Courts. apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objections (if any) filed by the other parties, shall be submitted through the District Court to which such Court is subordinate;

and such High Court shall, after considering the objections (if any) of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

S. 24 of the Civil Procedure Code does not empower a High Court to transfer a suit instituted within its own jurisdiction to the jurisdiction of another High Court, but only to declare in which Court a suit shall proceed, and, if necessary, to stay all further proceedings within its own jurisdiction. The defendants in a suit instituted at Mainpuri, who resided and carried on business at Surat, applied under s. 24 of the Civil Procedure Code that the suit might be tried at Surat, on the ground that it would be tried with greater convenience to them at that place. *Held* that, there being no balance in favour of either justice or convenience on the side of the Surat Court, the suit should proceed at Mainpuri.—*Tula Ram v. Harjiwan Das*, 5 All. 60.

WHERE a person, being at the time a pauper, petitions, under the provisions of Act VIII. of 1859, for leave to sue as a pauper, but subsequently, pending an enquiry into his pauperism, obtains funds which enable him to pay the court-fees, and his

petition is allowed upon such payment to be numbered and registered as a plaint, his suit shall be deemed to have been instituted from the date when he filed his pauper-petition, and limitation runs against him only up to that time. S. 13, Act VIII. of 1859, enacts that when a suit is brought for immovable property situated within districts subject to different Sudder Courts, the Judge in whose Court the suit is brought shall apply to the Sudder Court to which he is subject for authority to proceed, and the Sudder Court to which the application is made, with the concurrence of the other Sudder Court within whose jurisdiction the property is partly situated, may give authority to proceed. But no power is expressly given in the section cited, or elsewhere in the Act, to direct the transfer of a suit brought in a Court subordinate to one Sudder Court to a Court subordinate to another Sudder Court. *Query* whether Sudder Courts acting in concurrence have power to make such a transfer?—*Stuart Skinner alias Nawab Mirza (Plaintiff) v. William Orde and another (Defendants)*, I. L. R., 2 All. 241.

25. The High Court or District Court may, on the application of M.S.C.C.

Transfer of suits. any of the parties, after giving notice to the parties, and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit, whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature, and the amount or value of its subject-matter.

For the purposes of this section, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

AN ORDER under s. 25 of the Civil Procedure Code, transferring a suit in which an appeal would lie from the decree made therein, is not subject to revision by the High Court under s. 622.—*Farid Ahmad v. Dulari Bibi*, I. L. R., 6 All. 233.

THE High Court cannot make an order of transfer of a case under s. 25 of the Code of Civil Procedure, unless the Court from which the transfer is sought to be made has jurisdiction to try it.—*Pearv Lall Mozoomdar v. Komal Kishore Dassia*, I. L. R., 6 Cal. 30; *Govind Chunder Goswami v. Rugun Money*, I. L. R., 6 Cal. 60.

AN OFFICER who exercises executive and judicial functions, having himself dealt with a certain matter, and formed and expressed an opinion upon its merits in his executive capacity, and having further advised and directed litigation in support of this view, is, in consequence, disqualified from dealing as a Judge with this same question when it comes into Court and has to be dealt with judicially.—*Loburi Domini v. Assam Railway and Trading Co.*, I. L. R., 10 Cal. 915.

A DISTRICT Court transferred for trial a suit instituted in a Court subordinate to it to another Court subordinate to it. The Court in which the suit was instituted was not the one in which the suit should have been instituted, and consequently the Court to which it was transferred made an order dismissing it, and directing the return of the plaint for presentation to the proper Court. *Held* that such order must be taken to have been passed under s. 57 of the Civil Procedure Code, and was therefore appealable under s. 588 (6); and that the defect of jurisdiction arising out of the institution of the suit in the wrong Court was not cured by the transfer of the suit.—*Pachaoni Awasthi v. Ilahi Bakhsh*, I. L. R., 4 All. 478.

S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindu and her adopted son sued as co-plaintiffs, claiming in

the alternative either to recover the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, *held* that the suit was bad for misjoinder. *Held* also that when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it, by returning the plaint for amendment. *Farzand Ali v. Yusuf Ali* (I. L. R., 2 All. 669) dissented from.—*Lingammál v. Venkuttammál*, I. L. R., 6 Mad. 239.

Ss. 25 and 647 of the Civil Procedure Code (Act X. of 1877) are both applicable to Courts of Small Causes in the *mufassal*, and the former section is extended by the latter to execution-proceedings in such Courts. Under s. 25 of the Civil Procedure Code, Act X. of 1877, the District Judge has power to withdraw an application for execution of a decree from a subordinate Court (such as a *Mufassal* Court of Small Causes) and to dispose of it himself, or to transfer it to another subordinate Court competent to deal with it. The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts, has no bearing upon a question of jurisdiction.—*Ballaji Ranchoddas* as manager of the estate of *Mohanlal Dalsukhrām*, Deceased (Applicant), I. L. R., 5 Bom. 680.

A SUIT of the nature cognizable in a Court of Small Causes was instituted in the Court of a Subordinate Judge, the Judge of which, at the time of the institution of the suit, was personally invested with Small Cause Court jurisdiction. That Judge retired from office without trying the suit, and the District Judge directed his successor, who was not invested with Small Cause Court jurisdiction, to try it, and he did so. *Held* that it must be taken that the suit was transferred under s. 25 of the Civil Procedure Code to the Court of the Subordinate Judge; and that, therefore, regard being had to the provisions of that section, that the Court trying any suit withdrawn thereunder from a Court of Small Causes shall, for the purposes of such suit, be deemed a Court of Small Causes, no appeal would lie in the case to the District Judge.—*Kauleshar Rai v. Dost Muhammad Khan*, I. L. R., 5 All 274.

A SUIT for the infringement of certain inventions, instead of being instituted in the Court having, by virtue of s. 22 of Act XV. of 1859, jurisdiction to entertain it, was instituted in a Court subordinate to such Court not having such jurisdiction. The Court having jurisdiction to entertain such suit, at the joint request of the parties, transferred it for trial to itself under s. 25 of the Civil Procedure Code, and tried it. The plaintiff did not, as required by s. 34 of Act XV. of 1859, deliver with his plaint particulars of the breaches complained of in the suit. In his plaint, after describing his inventions, he alleged generally that the defendant had made and used them at a certain place without his license. *Held* that, inasmuch as the parties had assented to the transfer of the suit, and its transfer brought it into the right Court, the fact that the suit had been originally instituted in the wrong Court did not render the transfer illegal, and the Court having jurisdiction had properly tried the suit. *Held* also that, as required by s. 34 of Act XV. of 1859, the plaintiff should have delivered with his plaint particulars of the breaches complained of; that the general allegation as to infringement contained in the plaint did not amount to such particulars; and that, under these circumstances, the plaintiff came into Court with a case which could not be tried.—*Petam v. Bull*, I. L. R., 5 All. 371.

T, B, R, and W, the owners of a certain estate in equal shares, in 1863, entered into a partnership "for the cultivation of tea and other products" upon such estate. In 1864, H, E, and I, joined the firm. In 1870 H died; and in 1871 T purchased his share and those of E and I, and in 1873 of R. In 1875, T gave the Delhi and London Bank a mortgage on such estate as security for the repayment of money which he had borrowed from the Bank ostensibly for the purposes of the estate. The Bank obtained a decree against him personally for the money, in execution of which his rights and interests in the estate were put up for sale on the 20th June, 1877, and were purchased by the Bank, which obtained possession of the estate in August, 1877. In August, 1879, B and W's executor sued T and the Bank, claiming a declaration that they were or had been partners with T in the estate; that if the partnership should be held to be subsisting, it might be dissolved, or that, if it had ceased to exist, the date of its termination might be fixed; and that in either event

a liquidator might be appointed to take an account, and, after realizing assets, and discharging liabilities, might be ordered to pay them each one-third of such balance as remained. The suit was instituted in the Court of a District Judge. He transferred it to the Court of a Subordinate Judge. The High Court subsequently transferred it to its own file. *Held* that the suit was not one falling within the purview of s. 265 of the Contract Act; but, assuming that it was such a suit, and the Subordinate Judge had no jurisdiction, the High Court was nevertheless competent to answer it. That the Bank, as T's representative by purchase, had been properly joined as a defendant in the suit. That the period of limitation applicable to the suit was that provided in No. 120, and not No. 106. Act XV. of 1877; but that in either case the suit was within time, as the partnership was dissolved, and consequently time began to run, not from the death of H, or the purchases by T of his share, or those of E and I in 1871, or of R in 1873, but in August, 1877, when the defendant Bank took possession of the partnership-property. That, as the effect of the purchases by T in 1871 and 1873 was to relieve the estates of H, E and I, and R of all part and future liabilities of the partnership, in respect of which B and W still continued as liable as T, and to which they would have to contribute to discharge, such purchases should be regarded and treated as made on behalf of the partnership, and therefore at the time of the execution of the mortgage of the estate B, W, and T, were interested in the estate to the extent of one-third each. That, although T was not authorized, either actually or impliedly, by B and W to mortgage the estate, and the mortgage therefore was not binding on them, yet as they allowed him to conduct the business of the estate in such a manner as to make it appear that the control and management of it rested with him, and he was, for all ordinary business-purposes, their representative, B and W were bound, in any accounting that might take place, to recoup the defendant Bank for such advances as were made to T for the necessary purposes of the estate, in the same proportion as they must discharge debts due to other creditors. That T was entitled to be reimbursed such moneys of his own as he had expended within the legitimate scope and for the proper purposes of the partnership as originally contemplated by the parties. Directions to the liquidator appointed how to proceed.—*Harrison and another v. The Delhi and London Bank and another*, I. L. R., 4 All. 437.

CHAPTER III.

OF PARTIES, AND THEIR APPEARANCES, APPLICATIONS, AND ACTS.

26. All persons may be joined as plaintiffs in whom the right to M.S.C.C.

Persons who may be any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment.

But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court, in disposing of the costs of the suit, otherwise directs.

No member of an undivided Hindu family, except the manager of the family as such, is entitled to bring a suit to establish a right belonging to the family without making the other members of the family parties to the suit.—*Arunachala v. Vythialinga*, I. L. R., 6 Mad. 27.

CERTAIN properties were sold to A by private contract. Subsequently the properties were attached in execution of a decree against A's vendors, and sold in execution to various purchasers. A instituted a suit against his vendors, the decree-holders, and the purchasers, to set aside the execution-sale. *Held* that the suit was not defective by reason of misjoinder of parties. *Rajaram Tewari v. Luchman Prasad* (B. L. R., Sup Vol. 731; S. C., 8 W. R. 13) distinguished.—*Haranund Mozoomdar v. Prosunno Chunder Biswas*, I. L. R., 9 Cal. 763.

S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindú and her adopted son sued as co-plaintiffs, claiming in the alternative either to recover the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, *held* that the suit was bad for misjoinder. *Held* also that when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it by returning the plaint for amendment. *Farzand Ali v. Yusuf Ali* (I. L. R., 2 All. 669) dissented from.—*Lingammál v. Venkatammál*, I. L. R., 6 Mad. 239.

By the memorandum and Articles of Association of the new Dhurumsey Poonjabhoy Spinning and Weaving Company, the plaintiffs' firm of M F and Co. were appointed agents of the Company for twenty-five years, and it was provided that they should have the general control and management of the Company. Clause 98 of the Articles provided that the said firm, as such agents, should have full power and authority (*inter alia*) to appoint and to employ, in or for the purposes of the transaction and management of the affairs and business of the Company, such solicitors as they should think proper. An agreement, dated 26th August, 1874, was also entered into between the Company and the partners in the firm of M F and Co., their executors, administrators, and assigns, *for the time being constituting the partnership firm of M F and Co.*, whereby it was agreed that the said firm should be agents to the Company for twenty-five years to buy and sell, &c., and particularly to exercise all the powers contained in clause 98 of the Articles of Association. Messrs. C and B were duly appointed solicitors to the Company, and acted as such for a considerable time. Merwánji Frámji, one of the members of the said firm of M F and Co., died in the middle of March, 1876. The plaintiffs complained that G, one of the shareholders in the Company, became desirous of ousting the plaintiffs from the position of agents of the Company, and of becoming the managing director of the Company; that, in July, 1881, he procured his own election, and that of certain nominees of his, as directors of the Company; and on the 8th August, 1881, procured the passing of a resolution at a Board-meeting to the effect that as Messrs. C and B, the Company's solicitors, were also the solicitors of the agents, it was desirable, for the interests of the Company, that a change should be made, and that Messrs. H, C, and L, be appointed solicitors of the Company. The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of G, of ousting the plaintiffs from their agency, and getting the management of the Company for himself; that Messrs. H, C, and L, had been for a long time the solicitors of G, and had been advising him in his designs upon the Company and upon the plaintiffs, and they contended that the resolution was a breach of the contract between the Company and the plaintiffs, and a violation of the Articles of Association of the Company. The plaintiffs sued G and two other directors of the Company, and the Company itself, and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August, 1874, and in particular from carrying into effect the resolution appointing Messrs. H, C, and L as solicitors for the Company, and to restrain them from doing any thing inconsistent with the memorandum and Articles of Association. The defendants contended that the contract of the 26th August, 1874, had been determined by the death of Merwánji Frámji, and that the powers conferred on the agents by clause 98 of the Articles were, subject to the general powers of management, vested in the directors by the Articles, and that the case was not one in which an injunction could be granted. *Held* that, having regard to the memorandum and Articles of Association, the contract was that the firm of M F and Co. for the time being should be the agents of the Company for twenty-five years, and that the right to sue on the contract by its nature survived to the plaintiffs after the death of Merwánji Frámji. *Held* also that there being no provision either in the Articles of Association or the agreement of 26th August, 1874, that the power thereby conferred on the agents should be subject to the control or assent of the directors, there was no right in the directors to interfere with the agents in the exercise of their powers otherwise than as representing the Company in virtue of their general powers of management. It being admitted that the conduct of the defendants would be supported by the Company in general meeting owing to their

having a preponderance of votes, *held* that, inasmuch as the Court would not, by a decree for specific performance or by injunction, compel the Company to retain the plaintiffs in the confidential position of agents, it would not restrain the defendants or the Company from appointing a solicitor, which was only a violation of what was ancillary or incidental to the principal part of the contract, *viz*, the agreement that the plaintiffs should be the agents of the Company for twenty-five years; and, further, *semble* that on the merits of the case the Court would not interfere on behalf of the plaintiffs. Counsel on behalf of the plaintiffs sought to obtain the injunction on the ground that the resolution of the 8th August, 1881, appointing Messrs. H, C, and L. solicitors of the Company, was contrary to the memorandum of Association, and, therefore, *ultra vires*; and, in order that this point might be pressed against the defendants, it was proposed that the plaint should be amended by alleging a cause of action in two of the plaintiffs as *shareholders*, as well as a cause of action in all the plaintiffs as *parties contracting* with the Company. *Held* that, under the provisions of sections 26 and 31 of the Civil Procedure Code (Act X. of 1877), the amendment could not be allowed. The plaintiffs, as shareholders and contractors, had not the same cause of action, by which words were meant not only the act complained of, but also the right violated by that act. The rights of the plaintiffs as contractors, alleged to be violated by the resolution, were rights given to them by their agreement; but the rights of the plaintiffs as shareholders were rights secured to them by the Articles of Association.—*Nusserwānji Merwānji Pānday and others (Plaintiffs) v. Gordon and others (Defendants)*, I. L. R., 5 Bom. 266.

27. Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful M.S.C.O.

Court may substitute or add plaintiff for or to plaintiff suing. whether it has been instituted in the name of the right plaintiff, the Court may, if satisfied

that the suit has been so commenced through a *bond fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as the Court think just.

28. All persons may be joined as defendants against whom the M.S.C.O.

Persons who may be joined as defendants. right to any relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same matter.

And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

A STRANGER to a contract of which specific performance is sought cannot be a party to the suit. Where, therefore, the plaintiff sued as against one defendant for specific performance of a contract to sell land, and as against another for a declaration that he was not entitled to any charge upon the said lands, *held* that the latter defendant was improperly made a party to the suit.—*Luckumsey Ookerda (Plaintiff) v. Fazulla Cassumbhoy and others (Defendants)*, I. L. R., 5 Bom. 177.

READING ss. 28, 29, and 32 of Act X. of 1877 together, that where an application is made under s. 32 for the addition of a person, whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original causes of action, in which such person has an identity or community of interest with the original plaintiff or defendant.—*Naraini Kuar v. Durjan Kuar; Naraini Kuar v. Piarey Lal*, I. L. R., 2 All. 738.

A SUIT to have a *mokurrari pattá* enforced as against one co-sharer granting it, and other co-sharers who repudiate it, and in the alternative to have the *salami* paid for the *mokurrari pattá* returned, is in substance a suit to enforce a contract to place the plaintiff in possession of the land under the *pattá*, and to declare his rights to it as against all the defendants; and under s. 19 of the Specific Relief Act, the plaintiff is entitled to ask for compensation as against the defendant granting the *pattá*.

Under s. 28 such an alternative claim may be allowed against one or more of the defendants.—*Rajdhur Chowdhry v. Kalikristna Bhattacharjya and others*, I. L. R., 8 Cal. 963.

THE plaintiffs brought a suit to recover certain sums of money from the defendants, due to them under certain contracts which they alleged had been entered into by themselves, and one A D, as agent of the defendants, and asked for an account. The defendants, in their written statement, contended that there was no privity of contract between themselves and the plaintiffs, and denied the alleged agency of A D. The plaintiffs, before the hearing, applied to the Court to have A D added as a party-defendant under ss. 28 and 32 of Act X. of 1877, asking to be allowed to amend their plaint so as to pray for relief in the alternative against the original defendants or the said A D, or both against the original defendants, and the said A D. *Held* that, under s. 23, they were entitled to the order on the authority of the case of *Child v. Stenning* (L. R. 5 Ch. D. 695).—*Buddree Doss and another v. Hoare, Miller, and Co.*, I. L. R., 8 Cal. 170.

Per FIELD, J.—Where a person, sued for rent, sets up the title of a third party, and alleges that he holds under, and pays rent to, him, such third party ought not to be made a party to the suit so as to convert a simple suit for arrears of rent into one for the determination of the title to the property in respect of which the rent is claimed. Such a suit raises only two issues, *viz.*: (1) does the relation of landlord and tenant exist between the plaintiff and defendant? (2) are the alleged arrears of rent due and unpaid? and these are questions in which the plaintiff and defendant are alone concerned, and no third party claiming a title adverse to the plaintiff can properly be made a party to the trial of these issues. S. 23 of the Civil Procedure Code is not imperative, but allows a discretion to be exercised; and in such a suit it is better, both in the interests of Government and for the proper adjudication of the question of title, that it should be tried by a competent Court in a suit directly framed and brought for that purpose.—*Lodai Mollah (Defendant) v. Kally Dass Roy (Plaintiff)*, I. L. R., 8 Cal. 238.

THE creditor of an insolvent, who had assigned all his property to trustees for the benefit of all his creditors generally, sued him for his debt, joining the trustees as defendants, on the ground that they had refused to register his claim. The trustees had refused to register the claim on the ground that the plaintiff had not applied for its registration within the time notified by them, and that he would not consent to abide by the order which the High Court might make on an application by the trustees for its advice regarding the claims of creditors who, like the plaintiff, had applied for the registration of their claims after such time, but before the assets of the insolvent had been distributed. The deed of trust empowered the trustees to distribute the assets of the insolvent after a certain time among the creditors who had preferred their claims within that time, and declared that they should not be liable for such distribution to creditors who had not preferred their claims within that time; but it did not empower them to refuse to register claims made after that time, but before distribution of the assets. *Held* that the trustees had been properly joined as defendants in such suit; that their refusal to register the plaintiff's claim gave him a cause of action against them; and that, inasmuch as the plaintiff had applied for the registration of his claim before the distribution of the assets, the trustees had improperly refused to register it.—*Ajndhia Nath and others (Defendants) v. Anant Das and another (Plaintiffs)*, I. L. R., 3 All. 799.

DEFENDANT No. 1, the tenant of certain land at fixed rates, on the 12th November, 1877, sold his interest in the land to the plaintiff. At the time of the sale the land was in the actual possession of defendant No. 2, defendant No. 1's sub-tenant, against whom, however, defendant No. 1 had obtained an order for ejectment on the 25th June proceeding. On the 25th March, 1878, defendant No. 1 applied a second time for the ejectment of defendant No. 2, and while this matter was pending the plaintiff endeavoured to obtain possession of the land, but was resisted by defendant No. 2. He thereupon instituted a charge of criminal trespass against the latter. This criminal proceeding was pending when, on the 14th September, 1878, defendant No. 1 obtained a second order for defendant No. 2's ejectment. Under this order he obtained possession of the land, and also of the crop planted by defend-

ant No 2, which he sold to defendant No. 3 on the 22nd September, 1878. On the 25th of the same month the plaintiff's charge of criminal trespass against defendant No. 2 was dismissed, on the ground that defendant No. 1 was in possession, and the plaintiff had never obtained possession under his purchase. Defendant No 1 subsequently let the land to defendant No 4. The plaintiff, alleging that three causes of action had accrued to him—*viz.* on the 12th November, 1877, the date of the sale to him—(i) on the 30th March, 1878, when defendant No 1 applied a second time for the ejectment of defendant No. 2—and (iii.) on the 22nd September, 1878, when defendant No. 1 took possession of the land—sued defendants Nos. 1, 2, 3, and 4, claiming (i) possession of the land as against them all; (ii.) mesne-profits by way of damages for the year 1285 Fasli (September, 1877—September, 1878) as against defendants Nos. 1 and 2; (iii.) mesne-profits by way of damages for 1286 Fasli (September, 1878—September, 1879) against defendants Nos. 1 and 3; and (iv.) mesne-profits by way of damages for 1287 Fasli (September 1879—September, 1880) against defendants Nos 1 and 4. *Held* by the Full Bench (Mahmood, J., dissenting) that the Court of first instance had properly rejected the plaint, the suit being open to the objection that different causes of action against different defendants separately had been joined, for which procedure no sanction was to be found in the Code of Civil Procedure.—*Narsingh Das v. Mangal Dubey*, 5 All. 163.

A, B, C, and D, were the proprietors of a 2a. 13g. share in mouza E, and also of a 2a. 13g. share in a mouza F, both in the district of Bhágalpur. On the 19th September, 1872, A, B, C, and D mortgaged their share in E and F, together with property in the district of Tírhút, to the plaintiff. On the 24th March, 1873, A mortgaged his share in E and F to J. On the 13th November, 1872, A and B mortgaged their shares in E to K. On the 25th March, 1874, J obtained a decree on his mortgage, and the interests of A and B were purchased on the 5th January, 1875, by L. On the 17th April, 1874, M, to whom the first mortgage had been assigned, obtained a decree, and attached the property mortgaged. L objected that he had already purchased the interests of A, and on the objection being allowed, M instituted a suit against L for a declaration of priority, and obtained a decree on the 9th August, 1876. In execution of this decree the property first mortgaged was sold on the 4th March, 1878, and, after satisfying the mortgage, a surplus of Rs 7,664 remained. After the institution of the first suit, and before L's purchase, the plaintiff instituted a suit upon his mortgage in the Tírhút Court without having obtained leave to include that portion of the mortgaged property situate in the Bhágalpur district. On the 17th July, 1874, a decree was made in this suit. On the 17th January, 1877, K obtained a decree on his mortgage, and shares of A and B in E were sold, and purchased on the 3rd September, 1877, by N. The plaintiff had his decree transferred for execution to the Bhágalpur Court, and he attached the surplus sale-proceeds and a 1a. 9g. share in E. This attachment was withdrawn on the objection of L, who drew out the surplus sale-proceeds. The share purchased by N was also released from attachment. The plaintiff now sued L, N, and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E property, to recover the surplus sale-proceeds from L, and in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. It was contended for the defendants that the Tírhút Court had no jurisdiction in respect of the Bhágalpur property; that the suit was bad for multifariousness; that certain persons, co-sharers with the plaintiff, should have been made parties; and that the cause of action had been split. *Held* that the Tírhút Court had no jurisdiction in respect of the Bhágalpur property; that the suit was not bad by reason of multifariousness; and that it was not necessary to make the plaintiff's co-sharers parties, as he might be regarded as contracting on behalf of himself and the other members of the family as undisclosed principals. *Held* also that the cause of action had been split.—*Bungsee Sing v. Soodist Lall*, I. L. R., 7 Cal 739.

29. The plaintiff may, at his option, join as parties to the same M.S.C.O.

Joinder of parties liable suit all or any of the persons severally, or jointly
on same contract. and severally liable on any one contract, including parties to bills of exchange, hundís, and promissory notes.

THE drawer and acceptor of bills of exchange can be joined as co-defendants in a suit brought by the holder of such bills.—*Pestonjee Eduljee Gurdur v. Mirza Mahomed Ali and another*, I. L. R., 3 Cal. 541.

READING ss. 28, 29, and 32 of Act X. of 1877 together, that where an application is made under s. 32 for the addition of a person, whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original causes of action, in which such person has an identity or community of interest with the original plaintiff or defendant.—*Naraini Kuar v. Durjan Kuar*; *Naraini Kuar v. Piarey Lall*, I. L. R., 2 All. 738.

M.S.C.C. 30. Where there are numerous parties having the same interest in

One party may sue or defend on behalf of all in same interest. one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such cases give, at the plaintiffs' expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct.

A SUIT by one or more creditors on behalf of other creditors cannot be entertained without the leave of the Court being obtained for its institution. Such leave cannot be granted at the hearing.—*Oriental Bank Corporation v. Gobind Lall Seal*, I. L. R., 9 Cal. 604.

IF it is sought to make a decree in a suit binding on a Malabar tarwad, the procedure laid down in s. 30 should be followed if the members are numerous.—*Elayachandathil Kombi Achen and another* (First and Second Plaintiffs), Appellants, *v. Kenattun Kora Lakshmi Amma and others* (Second, Third, Fourth, and Fifth Defendants), Respondents, I. L. R., 5 Mad. 201.

A SUBORDINATE Judge having permitted the junior widow of a Hindú to be made a party to the proceedings in execution of a decree obtained by the senior widow against a debtor of their deceased husband, the High Court declined to interfere under s. 622 of the Code of Civil Procedure. *Quære*.—Whether s. 32 of the Code of Civil Procedure does not give a Court a discretionary power to add parties after adjudication of the question raised in the suit?—*Lingammál v. Venkattammál*, I. L. R., 6 Mad. 227.

THE "Majlis Islamia" or Muhammadan Association" of Meerut instituted a suit in its own name by its secretary. *Held* that, as such Association had not, *per se*, any status in law so to sue, the suit was not maintainable. *Semble* that, had such Association empowered one or more of its number to act for it in the matter of the suit in the manner provided by s. 30 of the Civil Procedure Code, the permission mentioned in that section might have been granted.—*Muhammadan Association of Meerut v. Bakhshi Ram*, I. L. R., 6 All. 284.

AN ORDER under s. 14, Act XX. of 1863, should be mandatory, and not prohibitory. Where a sacred book was kept at a temple, and was an object of veneration to the members of the sect entitled to worship there, *held* that a suit would lie under s. 14 of Act XX. of 1863, by some of the persons interested in the temple, to restrain the superintendent from removing the book to another place, and that he should be directed to retain it as a portion of the furniture of the temple.—*Dhurrum Singh v. Kishen Singh*, I. L. R., 7 Cal. 767.

A LANDLORD having obtained a decree against the karnavan and senior anandravans of a Malabar tarwad, for the recovery of certain lands demised on perpetual lease to the tarwad, on the ground that the tenure was forfeited by the denial of the landlord's title by the karnavan, the junior members of the tarwad sued the parties to that decree to set aside the decree and also the forfeiture of the tenure, on the ground that the karnavan had acted improperly in denying the title of the landlord. It was found that the karnavan acted *bona fide* in denying his landlord's title and in defending the suit. *Held* that the plaintiffs could not succeed.—*Gopalan v. Valia Tamburatti*, I. L. R., 7 Mad. 87.

A DECREE against a karnavan of a Malabar tarwad, as such, is binding upon the members of that tarwad, though not parties to the suit, in the absence of fraud or collusion. A karnavan is not a mere trustee, nor do the rules of Courts of Equity as to the necessity of making *cestui que trusts* parties to suits against trustees by strangers apply to the case of a karnavan and the members of the tarwad. Explanation 5 of s. 13. Civil Procedure Code, is not limited to the case of a suit under s. 30. The members of a tarwad claim under a karnavan, suing as such, within the meaning of explanation 5 of s. 13. Status of karnavan discussed.—*Varanakot Narayanan Nambūri v. Varanakot Narayanan Nambūri*, I. L. R., 2 Mad. 328.

In 1849, the Board of Revenue, acting under Reg. XIX. of 1810, interfered in the management of the affairs of a temple. In a suit relating to the affairs of the temple instituted in 1878, it did not appear whether any transfer of property had been made under s. 4 of Act XX. of 1863, but it did appear that, in 1865, the Judge of Patna had appointed a manager of the temple. *Held* that the right of the Government officers to control the affairs of the temple had been sufficiently proved. Section 14 of Act XX. of 1863 is generally applicable to all religious endowments, and while it, in one sense, restrains the ordinary Courts from dealing with cases against trustees of religious endowments, it gives special facilities for suits in the principal Civil Courts of the district by any of the persons interested in these endowments. *Quare*.—Whether, considering the provisions of s. 30 of the Civil Procedure Code, the retention of s. 14 of Act XX. of 1863 is at all necessary?

FOUR persons of the Chitpāvan caste brought a suit in 1876, alleging that they and the members of their caste, in common with certain other castes, possessed the exclusive right of entry and worship in the sanctuary of a temple, and that the defendants, members of the Palshe caste, not being of the privileged castes, infringed that right in 1871 and thereafter by entering the sanctuary and performing worship therein. They prayed for a declaration of their right and an injunction restraining the defendants from interfering with it. *Held* that the plaintiffs could maintain the suit for the personal injury alleged to have been suffered by themselves by the pollution of their sanctuary, whether under the Civil Procedure Code of 1859 or that of 1877, s. 30 of the latter being merely regulative, not constitutive. Whether or not it could be contended that they and the defendants so represented their respective castes that the decree in this suit should bind all members of the two castes, would be open to argument in any future case; but it might well be consistent with general principles to hold that certain judicial proceedings taken by or against a select number as representing a large class might, if fairly and honestly conducted, bind or benefit the whole class.—*Anandrāv Bhikāji v. Shankar Dāji*, I. L. R., 7 Bom. 323.

A SHAREHOLDER of an undivided piece of land sued three of his co-sharers, who, he alleged, had trespassed on the land by building thereon, for restoration of the land to its original condition. The Court of first instance tried and determined the suit as brought and framed. The lower Appellate Court dismissed the suit on the ground that, there being many co-sharers, the plaintiff could not alone sue, and, under s. 30 of the Civil Procedure Code, the suit was bad. *Per Stuart, C.J.*—That the lower Appellate Court was right in holding that s. 30 of the Civil Procedure Code applied to the case, but that it was not right in dismissing the suit, but should have remanded it for the procedure provided by that section. Also that the permission mentioned in s. 30 is express, and not constructive. *Per Brodhurst, J.*—That s. 30 was not applicable to the case, that section contemplating a case in which there are numerous parties, having the same interest in a suit, who are all before the Court, and are all anxious to have the matter in dispute disposed of, but, in order to save trouble and expense, are desirous that one or more of them shall sue or defend on behalf of all in the same interest. *Per Straight and Tyrrell, JJ.*—That s. 30 was not applicable to the case, the first part of that section implying that the plaintiff therein contemplated wishes to sue on behalf of other persons similarly interested in suing, they also wishing the same.—*Hira Lal v. Bhairon*, 5 All. 602.

In a suit by two of the worshippers at a certain mosque, instituted after having obtained the sanction of the Advocate-General under s. 539 of the Civil Procedure Code, against the mutawalli of the mosque, and two other persons to whom the

mutawalli had mortgaged part of the endowed property to secure the repayment of a loan, it appeared that one of the mortgagees had sold some of the *wagf* property in execution of a decree which he had obtained upon his mortgage, and the property had been purchased by the other mortgagee. The plaintiffs proved that the property purchased might be declared to be *wagf*; that the sale in execution might be declared to be invalid; that a mutawalli might be appointed by the Court; and that the costs of doing the acts of the *wagf* might be defrayed from the profits of the property belonging to the endowment. *Held* that, so far as regarded that portion of the prayer as fell within the provisions of s. 539 of the Code, the plaintiffs were not entitled to sue, as they were not "persons having a direct interest in the trust" within the meaning of the section, and that the suit should have been instituted under s. 14 of Act XX of 1863 after sanction obtained under s. 18. *Held* also that, though the plaintiffs might possibly have obtained leave to sue under s. 30 of the Code on behalf of themselves and the other persons attending the mosque, they, not having obtained such leave, were not entitled to institute the suit for the purpose of obtaining the relief asked for in the other prayers of the plaint. The words "trustee, manager, or superintendent of a mosque," &c., mentioned in Act XX. of 1863, mean the trustee, manager, or superintendent of a mosque, &c., to which the provisions of the Act are applicable, not the trustee, &c., of any mosque. And such persons are those to whom the provisions of Reg. XIX. of 1810 were applicable. The mosques, &c., to which the provisions of that Regulation were applicable, were mosques for the support of which endowments had been granted in land by the Government of the country or by individuals, and the mosques, &c., to which the provisions of Act XX. of 1863 apply, are not any mosques, &c., but any mosques for the support of which endowments in land have been made by the Government or private individuals.—*Jan Ali and another (Plaintiffs) v. Ram Nath Mundul and others (Defendants)*, I. L. R., 8 Cal. 32.

M.S.C.C.

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may, in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

IN A SUIT instituted against six different parties, plaintiff prayed for *khás* possession of a four-anna share in a certain lot, or, in the alternative, for a decree for arrears of rent against the defendants, or such of the defendants as should on enquiry appear to be respectively liable. It appeared that plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears. *Held* (with reference to Act X. of 1877, ss 31 and 45) that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for joinder of causes of action.—*Janokinath Mookerjee v. Ramrunjun Chuckerbutty*, I. L. R., 4 Cal. 949.

THE creditor of an insolvent, who had assigned all his property to trustees for the benefit of all his creditors generally, sued him for his debt, joining the trustees as defendants on the ground that they had refused to register his claim. The trustees had refused to register the claim on the ground that the plaintiff had not applied for its registration within the time notified by them, and that he would not consent to abide by the order which the High Court might make on an application by the trustees for its advice regarding the claims of creditors who, like the plaintiff, had applied for the registration of their claims after such time, but before the assets of the insolvent had been distributed. The deed of trust empowered the trustees to distribute the assets of the insolvent after a certain time among the creditors who had preferred their claims within that time, and declared that they should not be liable for such distribution to creditors who had not preferred their claims within that time; but it did not empower them to refuse to register claims made after that time, but before distribution of the assets. *Held* that the trustees had been properly joined as defendants in such suit; that their refusal to register the plaintiff's claim gave him a cause

of action against them ; and that, inasmuch as the plaintiff had applied for the registration of his claim before the distribution of the assets, the trustees had improperly refused to register it.—*Ajudhia Nath and others (Defendants) v. Anant Das and another (Plaintiffs)*, I. L. R., 3 All. 799.

A, B, C, and D, were the proprietors of a 2a. 13g. share in mouza E, and also of a 2a. 13g. share in mouza F, both in the district of Bhāgalpur. On the 19th September, 1872, A, B, C, and D mortgaged their shares in E and F, together with property in the district of Tīrhūt, to the plaintiff. On the 24th March, 1873, A mortgaged his share in E and F to J. On the 13th November, 1872, A and B mortgaged their shares in E to K. On the 25th March, 1874, J obtained a decree on his mortgage, and the interests of A and B were purchased on the 5th January, 1875, by L. On the 17th April, 1874, M, to whom the first mortgage had been assigned, obtained a decree, and attached the property mortgaged. L objected that he had already purchased the interests of A, and on the objection being allowed, M instituted a suit against L for a declaration of priority, and obtained a decree on the 9th August, 1876. In execution of this decree the property first mortgaged was sold on the 4th March, 1878, and after satisfying the mortgage, a surplus of Rs. 7,664 remained. After the institution of the first suit, and before L's purchase, the plaintiff instituted a suit upon his mortgage in the Tīrhūt Court without having obtained leave to include that portion of the mortgaged property situate in the Bhāgalpur district. On the 17th July, 1874, a decree was made in this suit. On the 17th January, 1877, K obtained a decree on his mortgage, and shares of A and B in E were sold, and purchased on the 3rd September, 1877, by N. The plaintiff had his decree transferred for execution to the Bhāgalpur Court, and he attached the surplus sale-proceeds and a 1a. 9g. share in E. This attachment was withdrawn on the objection of L, who drew out the surplus sale-proceeds. The share purchased by N was also released from attachment. The plaintiff now sued L, N, and the mortgagors for a declaration that his decree of the 17th July, 1874, affected the E property, to recover the surplus sale-proceeds from L, and in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. It was contended for the defendants that the Tīrhūt Court had no jurisdiction in respect of the Bhāgalpur property; that the suit was bad for multifariousness; that certain persons, co-sharers with the plaintiff, should have been made parties; and that the cause of action had been split. *Held* that the Tīrhūt Court had no jurisdiction in respect of the Bhāgalpur property; that the suit was not bad by reason of multifariousness; and that it was not necessary to make the plaintiff's co-sharers parties, as he might be regarded as contracting on behalf of himself and the other members of the family as undisclosed principals. *Held* also that the cause of action had been split.—*Bungsee Sing v. Soodist Lall*, I. L. R., 7 Cal. 739.

Two of the sons of a joint Mitakshara family, consisting of the father, three sons, and the widow and sons of a deceased son, and carrying on business in partnership, filed a suit on the 19th July, 1880, upon a *hatchitta*, dated the 11th December, 1876. No time was fixed for the payment of money, but the last payment made and entered by the defendant on the *hatchitta* was dated 30th July, 1877. On the 26th July, when the case came on for hearing, it was objected by the defendant that all the persons who sought to sue were not joined as plaintiffs. Thereupon, on the application of the original plaintiffs, the father and the third son, who were described as the surviving partners of the deceased son, were added as plaintiffs, but not until the suit as against them was barred by limitation. *Held* that the Court had rightly exercised its discretion in adding the 3rd and 4th plaintiffs to the record, although the suit was barred under s. 22 of the Limitation Act as against them. *Held* also that the claim of the original plaintiffs was likewise, inasmuch as they could only enforce that claim in conjunction with the other plaintiffs whose rights were barred under s. 22 of the Limitation Act. In actions of contracts it is the right of the defendant, if he takes the objection in proper time, to insist upon all persons with whom he has contracted being joined as plaintiffs, and if, after the objection has been raised, the plaintiff proceeds with the suit without taking proper steps to add the person or persons whose non-joinder has been objected to, and the Court finds that the objection was well-founded, the suit must be dismissed. *Baydonath Bag v. Grish Chunder Roy* (I. L. R., 3 Cal. 26) dissented from.

Held, further, that the suit would have been in time if all the plaintiffs had joined in the first instance. *Per Curiam*—The words “prescribed period” in section 20 of the Limitation Act mean, not the period prescribed for the payment of the debt, but the prescribed period of limitation. *Tarany Churn Nundee v. Shaikh Abdoor Rahman* (2 C. L. R. 846) doubted. There is no equity, but often much injustice, in allowing one joint contractor out of many to sue the defendant, notwithstanding an objection duly made by the latter, and the Court has no right to allow one co-contractor to recover under such circumstances, though he may no doubt adjust the same which he recovers with his co-contractors. As between the members of a joint family any one or more may be authorized by the rest to act as their agent or agents in any business-transaction; but when a joint family or any members of it carry on trade in partnership and contract with the outside public in the course of that trade, they have no greater privileges than any other traders; if they are really partners, they must be bound by the same rule for enforcing their contracts in Courts of law as the members of any other partnership.—*Ramsebuk and others (Plaintiffs) v. Ram Lal Koondoo (Defendant)*, 8 Cal. Law Rep. 457.

By the memorandum and Articles of Association of the new Dhurumsey Poonjabhoy Spinning and Weaving Company, the plaintiff's firm of M F and Co. were appointed agents of the Company for twenty-five years, and it was provided that they should have the general control and management of the Company. Clause 98 of the Articles provided that the said firm, as such agents, should have full power and authority (*inter alia*) to appoint and to employ, in or for the purposes of the transaction and management of the affairs and business of the Company, such solicitors as they should think proper. An agreement, dated 26th August, 1874, was also entered into between the Company and the partners in the firm of M F and Co., their executors, administrators, and assigns, *for the time being constituting the partnership firm of M F and Co.*, whereby it was agreed that the said firm should be agents to the Company for twenty-five years to buy and sell, &c., and particularly to exercise all the powers contained in clause 98 of the Articles of Association. Messrs. C and B were duly appointed solicitors to the Company, and acted as such for a considerable time. Merwánji Frámji, one of the members of the said firm of M F and Co., died in the middle of March, 1876. The plaintiffs complained that G, one of the shareholders in the Company, became desirous of ousting the plaintiffs from the position of agents of the Company, and of becoming the managing director of the Company; that, in July 1881, he procured his own election, and that of certain nominees of his, as directors of the Company; and on the 8th August, 1881, procured the passing of a resolution at a Board-meeting to the effect that as Messrs. C and B, the Company's solicitors, were also the solicitors of the agents, it was desirable, for the interests of the Company, that a change should be made, and that Messrs. H, C, and L, be appointed solicitors of the Company. The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of G, of ousting the plaintiffs from their agency, and getting the management of the Company for himself; that Messrs. H, C, and L had been for a long time the solicitors of G, and had been advising him in his designs upon the Company and upon the plaintiffs, and they contended that the resolution was a breach of the contract between the Company and the plaintiffs and a violation of the Articles of Association of the Company. The plaintiffs sued G and two other directors of the Company, and the Company itself, and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August, 1874, and in particular from carrying into effect the resolution appointing Messrs. H, C, and L as solicitors for the Company, and to restrain them from doing any thing inconsistent with the memorandum and Articles of Association. The defendants contended that the contract of the 26th August, 1874, had been determined by the death of Merwánji Frámji, and that the powers conferred on the agents by clause 98 of the Articles were, subject to the general powers of management, vested in the directors by the Articles, and that the case was not one in which an injunction could be granted. *Held* that, having regard to the memorandum and Articles of Association, the contract was that the firm of M F and Co. for the time being should be the agents of the Company for twenty-five years, and that the right to sue on the contract by its nature survived to the plaintiffs after the death of Merwánji Frámji. *Held* also that there being no provision either in the Articles

of Association or the agreement of 26th August, 1874, that the power thereby conferred on the agents should be subject to the control or assent of the directors, there was no right in the directors to interfere with the agents in the exercise of their powers otherwise than as representing the Company in virtue of their general powers of management. It being admitted that the conduct of the defendants would be supported by the Company in general meeting, owing to their having a preponderance of votes, *held* that, inasmuch as the Court would not, by a decree for specific performance or by injunction, compel the Company to retain the plaintiffs in the confidential position of agents, it would not restrain the defendants or the Company from appointing a solicitor, which was only a violation of what was ancillary or incidental to the principal part of the contract, *viz*, the agreement that the plaintiffs should be the agents of the Company for twenty-five years; and further *semble* that on the merits of the case the Court would not interfere on behalf of the plaintiffs. Counsel on behalf of the plaintiffs sought to obtain the injunction on the ground that the resolution of the 8th August, 1881, appointing Messrs. H, C, and L solicitors of the Company, was contrary to the memorandum of Association, and, therefore, *ultra vires*; and, in order that this point might be pressed against the defendants, it was proposed that the plaint should be amended by alleging a cause of action in two of the plaintiffs as *shareholders*, as well as a cause of action in all the plaintiffs as *parties contracting* with the Company. *Held* that, under the provisions of ss. 26 and 31 of the Civil Procedure Code (Act X. of 1877), the amendment could not be allowed. The plaintiffs, as shareholders and contractors, had not the same cause of action, by which words were meant not only the act complained of, but also the right violated by that act. The rights of the plaintiffs as contractors, alleged to be violated by the resolution, were rights given to them by their agreement; but the rights of the plaintiffs as shareholders were rights secured to them by the Articles of Association.—*Nusserwánji Merwánji Pánday and others (Plaintiffs) v. Gordon and others (Defendants)*, 1. L. R., 5 Bom. 266.

32. The Court may, on or before the first hearing, upon the ap- **M.S.C.O.**

Court may dismiss or add parties. application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Consent of person added as plaintiff or next friend.

No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent thereto.

Parties to suits instituted or defended under section 30.

Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

All parties whose names are so added as defendants shall be served

Defendants added to be served.

with a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons.

Conduct of suit.

The Court may give the conduct of the suit to such plaintiff as it deems proper.

AN ORDER refusing an application under Act X. of 1877, s. 32, by a person to be added as a defendant in a suit, is not applicable.—*Karman Bibi v. Misri Lal*, 1. L. R., 2 All. 904.

V SUE his brothers for his share of the estate of their deceased father, the father and sons being divided. V having been transported for life, his sons applied to be made plaintiffs in the suit on the ground that they had a joint interest with their father in their grandfather's estate. *Held* that, under the circumstances, the application was properly granted.—*Naiakká v. Nárayana*, I. L. R., 6 Mad. 331.

THE Secretary of State is not a necessary party to a suit to set aside a sale for arrears of revenue, but the Government have such interest as would, on their application, entitle them to be made a party. S. 424 of the Civil Procedure Code does not preclude a Court from adding the Secretary of State as a necessary party under s. 32 of the Code.—*Bal Mokoond Lall v. Jirjadhun Roy*, I. L. R., 9 Cal. 271.

A PERSON alleged to be a lunatic, though not found so under Act XXV. of 1858, may appear either by vakil or in person. Under s. 32 of the Code of Civil Procedure no person can be added as a plaintiff unless he has previously consented thereto; and if a person objects to be added as a plaintiff, the proper course is to make him a defendant.—*Uma Sundari Dasi (Plaintiff) v. Ramji Haldar and others (Defendants)*, I. L. R., 7 Cal. 242.

THE object of s. 32, which enables a Court to add parties whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, is to enable the Court to try and determine, once for all, material questions common to the parties and to third parties, and not merely questions between the parties to the suit.—*Vyidianadayyan v. Sitaramayyan*, I. L. R., 5 Mad. 52.

PLAINTIFF sued defendant for damages for slander of plaintiff's sister. The Court, regarding the suit as defective for warrant of parties, made plaintiff's sister a co-plaintiff under s. 73 of Act VIII. of 1859. *Held* that the defect was one not to be remedied under that section, and that as there was no right of suit in the plaintiff, the suit should have been dismissed.—*Subhaiyar (Defendant), Appellant, v. Kristnaiyar and another (Plaintiffs), Respondents*, I. L. R., 1 Mad. 383.

THE plaintiff in a partnership-suit to which there were twenty-one defendants applied to the Court for leave to withdraw the suit, or that the suit might be dismissed. Ten of the defendants supported the plaintiff's application. Two of the defendants objected, and applied, under s. 32 of the Civil Procedure Code (Act X. of 1877), that they might be made plaintiffs, and that the plaintiff might be made a defendant. The Court granted their application.—*Eduji Muncherji Wáchá v. Vulleebhoy Khánbhoy*, I. L. R., 7 Bom. 167.

IN A SUIT for the partition of joint family property, the mortgagees of the right, title, and interest of the plaintiff, applied under Act X. of 1877, s. 32, to be added as parties. *Held* that their presence was not necessary in order "to enable the Court effectually and completely to adjudicate and settle all the questions involved in the suit" within the meaning of s. 32. *Held* also that that section does not contemplate any application to the Court by the person proposed to be added.—*Mohindrobhoosun Biswas v. Shosheebhoosun Biswas*, I. L. R., 5 Cal. 882.

IN A SUIT for rent, where the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due, *held*, where the plaintiff disputed this, and objected to such course being taken, that it was improper to add such person as co-plaintiff, and that, if added at all, it should be as defendant, in order that the issue between him and the plaintiff might be properly tried. *Held* also that in such a case an appeal lies under s. 591 of the Civil Procedure Code.—*Googlee Sahoo (Plaintiff) v. Prem Lal Sahoo and another (Defendants)*, I. L. R., 7 Cal. 148.

THE plaintiffs brought a suit to recover certain sums of money from the defendants, due to them under certain contracts which they alleged had been entered into by themselves, and one A D as agent of the defendants, and asked for an account. The defendants, in their written statement, contended that there was no privity of contract between themselves and the plaintiffs, and denied the alleged agency of A D. The plaintiffs, before the hearing, applied to the Court to have A D added as a party-defendant under ss. 28 and 32 of Act X. of 1877, asking to be allowed to amend their plaint so as to pray for relief in the alternative against the original defendants or the said A D, or both against the original defendants and the said

A D. *Held* that, under s. 28, they were entitled to the order on the authority of the case of *Child v. Stenning* (L. R., 5 Ch. D. 695).—*Buddree Doss and another v. Hoare, Miller, and Co.*, I. L. R., 8 Cal. 170.

S *SUED* N and R jointly and severally for certain moneys. The Court of first instance gave S a decree for such moneys against N, and dismissed the suit against R. N appealed from the decree of the Court of first instance, but S did not appeal from it. The Appellate Court, at the first hearing of N's appeal, made R a respondent, the period allowed by law for S to have preferred an appeal having then expired, and eventually reversed the decree of the Court of first instance, dismissing the suit as against N, and giving S a decree against R. *Held* that, although the Appellate Court was competent to make R a party to the appeal, under ss. 32 and 582 of Act X. of 1877, yet it was not competent, with reference to s. 22 of Act XV. of 1877, to give S a decree against R, the former not having appealed from the decree of the Court of first instance within the time allowed by law.—*Ranjit Sing (Defendant) v. Sheo Pershad Ram (Plaintiff) and Raghunandan Ram (Defendant)*, I. L. R., 2 All. 487.

B AND N, the mortgagees of a mehal, granted the mortgagors a lease of the mehal, the mortgagors agreeing to pay the mortgagees a certain rent half-yearly on account of the right they held in equal shares, and that, in default of payment of such rent, "the mortgagees" should be entitled to sue for payment. The mortgagors having made default in payment of the rent, and N refusing to join in a suit against the mortgagors to enforce payment, B sued them alone for a moiety of the rent due. The Revenue Court of first instance held, with reference to Act XVIII. of 1873, s. 106, that B could not sue separately. *Held* by the High Court that the order of the Revenue Court of first appeal, directing (*inter alia*) that the Court of first instance should re-try the suit after making N a defendant in the suit, was not illegal, notwithstanding that the provisions of Act X. of 1877, s. 32, were not made applicable to the procedure of the Revenue Courts by Act XVIII. of 1873.—*Shib Gopal v. Baldeo Sahai*, I. L. R., 2 All. 264.

DURING the hearing of a suit for recovery of immoveable property it appeared from the evidence and certain documents put in that the plaintiff had mortgaged his right, title, and interest to a third person, by whom the suit was practically being carried on. On an application by the defendant for the mortgagee to be added as a party-defendant under the provisions of s. 32 of the Civil Procedure Code, the Court directed a rule to issue, calling on him to show cause why he should not be added as a party-defendant or give security for costs. The rule was not applied for on petition or affidavit, and set out no grounds for the application at all. On an objection taken by the mortgagee at the hearing of the rule, *held* that the grounds should have been stated on affidavit or have appeared on the face of the rule, and that the mortgagee was entitled to know what he had to answer, and consequently, the rule being informal, it was discharged with costs.—*Ramnarain Kallia v. Monee Bibee, and Ramnarain Kallia v. Gopal Doss Sing*, I. L. R., 9 Cal. 735.

A *SUED* as only son and heir of his father B. C, the widow of B, having, with the concurrence of A, taken out letters of administration of B's estate, was, on the application of A at the hearing of the suit, made a co-plaintiff under s. 32 of the Civil Procedure Code. *Held* that C ought not to have been joined as a plaintiff in the suit, inasmuch as A has no right at all to sue. S. 32, as far as the addition of plaintiffs is concerned, only applies to those cases in which the original party who brought the suit has some title to sue. *Per* Pontifex, J.—The power given by s. 27 of the Code ought to be exercised before the first hearing of the case. *Held* also that s. 2 of Act XXVII. of 1860 prohibited A from suing alone, for although he was, no doubt, beneficially entitled to recover it, yet there was no vexatious or fraudulent withholding of the debt within the meaning of that section. *Per* Garth, C.J.—A debt cannot be said to be "vexatiously withheld" within the meaning of that section simply because the debtor omits to pay it.—*Chunder Coomar Roy and another (Defendants) v. Gocool Chunder Bhattacharjee (Plaintiff)*, I. L. R., 6 Cal. 370.

IN A suit by the purchaser of goods by sample against the vendors for damages, on the ground that the bulk did not correspond with the sample, the vendors applied, under Act X. of 1877, s. 32, to add the vendor to them on the same samples of the goods as a defendant, alleging that the question between the plaintiffs and

themselves was the same as between themselves and their vendor. *Held*, refusing the application, that the plaintiffs "ought not to have the vendor to the defendants made a party to the suit, and that his presence was not necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." *Mahomed Badshah v. Nicol Fleming* (I. L. R., 4 Cal. 355). Followed in a case where two suits against K for possession of the property of B, deceased, were instituted in the Court of a Subordinate Judge by parties claiming adversely to one another as heirs to B, and the Judge, on the application of the plaintiffs in these suits, under s. 32, added the plaintiffs in the first suit as defendants in the second, and the plaintiffs in the second suit as defendants in the first.—*Naraini Kuar v. Durjan Kuar*; *Naraini Kuar v. Piarey Lall*, I. L. R., 2 All. 738.

A SUED V and S to establish his right to attach a certain house in execution of a decree obtained by him in a previous suit. In their written statement the defendants alleged that A had obtained the decree in question by fraud. Shortly before the present suit, V had mortgaged the house to H for Rs. 33,000. About three weeks after the suit had been filed, H advanced a further sum of Rs. 5,000 to V on the same security, and on the same day (12th December, 1881) entered into an agreement with V, by which he agreed to buy the house for Rs. 45,000, the sale to be completed immediately after the decision of the present suit. The agreement provided that V should defend the suit: but, if the result of the suit should be to establish the plaintiff's right to seize the house in execution, then that H should be at liberty to cancel the contract of sale. Subsequently V wrote to H, declaring his intention of abandoning his defence. H thereupon applied to be made a defendant to the suit, in order to protect the house from the plaintiff. *Held* that H was entitled to be made a party under sections 32 and 372 of the Civil Procedure Code (Act XIV. of 1882). *Held* also that the agreement of 12th December amounted to an absolute sale, by V to H, of the equity of redemption of the house in question, and that it was not champertous.—*Ahmedbhoy Hubibhoy v. Vulleebhoy Cassumbhoy*, I. L. R., 8 Bom. 323.

HELD, reading ss. 28, 29, and 32 of Act X. of 1877 together, that, where an application is made under s. 32 for the addition of a person, whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original cause of action, in which such person has an identity or community of interest with the original plaintiff or defendant. Two suits against K for possession of the property of B, deceased, were instituted in the Court of the Subordinate Judge by parties claiming adversely to one another as heirs to B. The Subordinate Judge, on the applications of the plaintiffs in these suits, under s. 32 of Act X. of 1877, added the plaintiffs in the first suit as defendants in the second, and the plaintiffs in the second suit as defendants in the first. *Held* on appeal by the defendant K from the orders of the Subordinate Judge, applying the rule stated above, that such addition of parties, not being necessary to enable the Subordinate Judge "effectually and completely to adjudicate upon and settle all the questions involved in the suit," were not proper. The principles on which s. 73 of Act VIII. of 1859 should be interpreted enunciated by Sir Barnes Peacock in *Jaygobind Dass v. Gauri Pershad Shaha* (7 W. R. 222); *Raja Ram Tewari v. Lachman Pershad* (8 W. R. 15); and *Ahmad Hussain v. Khodeja* (10 W. R. 316; 3 B. L. R., A. C., 28); and the remarks of Pontifex, J., in *Muhammad Badshah v. Nicol Fleming* (I. L. R., 4 Cal. 355) followed and applied.—*Naraini Kuar* (Defendant) *v. Durjan Kuar* and others (Plaintiffs); *Naraini Kuar* (Defendant) *v. Piarey Lall* and others (Plaintiffs), I. L. R., 2 All. 738.

IN A suit for rent at enhanced rate brought by all the shareholders in the estate, the rent of which it was sought to enhance, it appeared that the notice of enhancement issued under s. 14 of Act VIII. (B.C.) of 1869 had been issued at the instance of some only of the persons entitled to the rent. *Held*, by Garth, C.J., Pontifex and Mitter, JJ. (Morris and McDonell, JJ., *dissentientibus*), that the suit would lie. *Per* Garth, C.J.—The right to enhance rent from time to time as occasion arises is one of those incidents of the contract which the landlords or any of them have a right to enforce. Where some of the co-sharers refused to join in a suit to enforce such right, the co-sharers desirous of bringing the suit may do so under s. 32 of the Civil Procedure Code, Act X. of 1877, making the recusant co-sharers defendants. *Per* Morris and McDonell, JJ.—A suit cannot be brought by a co-sharer in actual

separate receipt of a share of the rent for enhanced rent of his share, though notice be served in respect of the whole rent, and all the co-sharers be made parties to the suit. Nor will a suit for arrears of rent at enhanced rate, brought by all the shareholders, lie where the notice of enhancement under s. 14 of Act VIII. (B.C.) of 1869 has been issued at the instance of some only of the persons entitled to the rent. *Per* Garth, C.J.—Those persons who are entitled to sue as landlords have also the right under s. 14 of Act VIII. (B.C.) of 1869 to give the necessary previous notice. *Per* Morris, J.—The person to whom the rent is payable must, where more persons than one are entitled to receive the rent, signify all such persons.—*Chuni Singh and others* (Plaintiffs), *Appellants, v. Hira Mahata* (Defendant), Respondent, 9 Cal. Law Rep. 37.

THE words in para. 1 of s. 53 of the Code of Civil Procedure (Act X. of 1877), "at or before the first hearing," are merely directory and not mandatory, and therefore a plaintiff may, subsequently to the "first hearing," amend his plaint, provided such amendment does not alter the original character of his suit. The plaintiffs (mortgagors) in a suit against their mortgagees sought only for production of the mortgage-deed or for an account, although the averments in the plaint warranted a prayer for redemption. Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption. *Held* that the provisions of s. 53 of the Civil Procedure Code (Act X. of 1877) did not preclude the Court from permitting the amendment to be made. It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it), or in the written statement, but which may appear upon the allegations made on oath by the parties, or by any person present on their behalf, or made by the pleaders of such parties or persons. S. 34 of the Civil Procedure Code (Act X. of 1877) limits the time within which a defendant may object for want of parties, but it does not so limit the right of the plaintiff to add parties. In some cases s. 34 would not prevent even a defendant from objecting to the want of a party after the first hearing, *e.g.*, where after the first hearing and before decree a co-parcener or remainderman or reversioner is born, or where a woman (who is a party) is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and therefore could not have been made or waived by the defendant; and if he made it at the earliest opportunity after it came into existence, he would have satisfied the spirit of s. 34.—*R. and N. Modhe* (Plaintiff) *v. S. Donger* (Defendant), I. L. R., 5 Bom. 609.

33. Where a defendant is added, the plaint, if previously filed, M.S.C.O.

Where defendant added, shall, unless the Court direct otherwise, be plaintiff to amend. amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

34. All objections for want of parties, or for joinder of parties who M.S.C.O.

Time for taking objections as to non-joinder or misjoinder. have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived by the defendant.

THE words in para. 1 of s. 53 of the Code of Civil Procedure (Act X. of 1877), "at or before the first hearing," are merely directory and not mandatory, and therefore a plaintiff may, subsequently to the "first hearing," amend his plaint, provided such amendment does not alter the original character of his suit. The plaintiffs (mortgagors) in a suit against their mortgagees sought only for production of the mortgage-deed or for an account, although the averments in the plaint warranted a prayer for redemption. Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption. *Held* that the provisions of s. 53 of the Civil Procedure Code (Act X. of 1877) did not preclude the Court from permitting the amendment to be made. It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it), or in the written

statement, but which may appear upon the allegations made on oath by the parties, or by any person present on their behalf, or made by the pleaders of such parties or persons. S 34 of the Civil Procedure Code (Act X. of 1877) limits the time within which a defendant may object for want of parties, but it does not so limit the right of the plaintiff to add parties. In some cases s 34 would not prevent even a defendant from objecting to the want of a party after the first hearing, *e.g.*, where after the first hearing and before decree a co-parcener or remainderman or reversioner is born, or where a woman (who is a party) is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and therefore could not have been made or waived by the defendant; and if he made it at the earliest opportunity after it came into existence, he would have satisfied the spirit of s. 34.—*R. and N. Modhe (Plaintiff) v. S. Donger (Defendant)*, I. L. R., 5 Bom. 609.

M.S.C.C.

35. When there are more plaintiffs than one, any one or more of

Each of several plaintiffs or defendants may authorize any other to appear, &c., for him.

them may be authorized by any other of them to appear, plead, or act for such other in any proceeding under this Code: and in like manner, when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any such proceeding.

Authority to be in writing, signed and filed.

The authority shall be in writing signed by the party giving it, and shall be filed in Court.

Recognized Agents and Pleadors.

M.S.C.C.

36. Any appearance, application, or act in or to any Court, required

Appearances, &c., may be in person, by recognized agent, or by pleader.

or authorized by law to be made or done by a party to a suit or appeal in such Court, may, except when therewith expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall be made by the party in person, if the Court so direct.

NONE but barristers and attorneys have a legal right to practise in the Bombay Court of Small Causes. Neither ss. 2 and 36 of the Code of Civil Procedure (Act No. XIV. of 1882), nor ss. 38 and 76 of the Presidency Small Cause Courts Act (No. XV. of 1882), give the pleaders of the Bombay High Court that right. The provisions of s. 47 of Reg. II. of 1827, authorizing persons holding *sanads* from the High Court to practise in the Mofussil Courts, are still in force. *Per* Bayley, West, Pinhey, and Latham, JJ.—S. 2 of the Code of Civil Procedure, 1882, does not give every pleader a title to appear and plead; it only enacts that pleader means every person entitled to appear and plead for another in Court, and includes an advocate, a *vakil*, and an attorney of a High Court. Consequently, if pleaders or *vakils*, who are the same class of practitioners, are not entitled by law to appear or plead for another in Court, the definition of 'pleader' gives them no new right or *status*. The words in s. 36 of the Code of Civil Procedure, Act XIV., 1882, "by a pleader duly appointed to act on his behalf," do not simply mean a person duly appointed by the party in the suit, but a pleader duly appointed according to law regarding pleaders in force in the particular Court.—*In re The Pleadors of the High Court*, I. L. R., 8 Bom. 105.

M.S.C.C.

37. The recognized agents of parties by whom such appearances,

Recognized agents.

applications, and acts, may be made or done, are—

(a) persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act is made or done, authorizing them to make and do such appearances, applications, and acts on behalf of such parties ;

(b) mukhtárs duly certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtárs ;

(c) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications, and acts.

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Panjáb, and the Chief Commissioners of Oudh and the Central Provinces ; but in those territories the recognized agents of parties by whom such appearances, applications, and acts may be made and done, shall be such persons as the Local Government may, from time to time, by notification in the official Gazette, declare in this behalf.

THE term non-resident in s. 37, cl. a, of the Code of Civil Procedure (Act X. of 1877), covers every absence which may reasonably be supposed to have been within the contemplation of the Legislature in using that term ; thus, where a Mār-wādi had resided for forty years at Pen, and had also a place of business there, but who had gone to his native country to get his sisters married, and had been absent upwards of four months, it was *held* that he was 'non-resident' within the local limits of the jurisdiction of the Pen Court, and that a person holding a general power-of-attorney from him was a recognized agent within the meaning of the section.—Rāmchandra Sakham (Appellant) v. Keshav Durgāji by his agent Hakma Depaji (Respondent), I. L. R., 6 Bom. 100.

TO SATISFY the conditions of s. 76 of the Civil Procedure Code (Act X. of 1877) as to service of summons on an agent, there must be a person residing without the local jurisdiction, but carrying on business or work within those limits by a manager or agent, and sued on account of such work—that is, business either actually itself carried on by the agent or manager, or forming part of the business in the sense of a connected course of transactions to the management of which he has been duly appointed. Ss. 76 and 37, cl. c, are to be construed together, and are intended to carry out the same scheme of relief, which rests upon the idea that where an agent has been put forward substantially to take the place of his principal within a particular jurisdiction, he should take the place of such principal (at the option of any person who has dealt with him) in any legal proceedings that may arise out of the business or work in which the agent has been virtually a local principal. The manager or agent contemplated by the Code is one who has an initiative and independent discretion, albeit subject possibly to principles and general orders prescribed for his guidance. A mere servant employed to carry out orders or to execute a particular commission, or a factor or common agent who is not identified with the firm for which he acts, is not such an agent. The firm of Ganesh Lal Soonder Lal carried on business at Agra. It had no place of business in Bombay, but it employed G as its agent in Bombay in certain dealings which it had with the plaintiff. The letters and telegrams of the firm to G were sent to the plaintiff's

place of business, or addressed to G as an individual, not in the name of the firm. G did not himself initiate any business, or in any way stand between his employer's firm and the plaintiff. *Held* that G was not the defendant's manager or agent within the meaning of the Civil Procedure Code, s. 76, and that, in an action against the defendants, service of summons upon him was not due service. G in particular instances drew hundis on the firm of Ganesh Lal Soonder Lal, which that firm duly accepted and paid. *Held* that he might reasonably be deemed their agent or manager for this particular kind of business, if for no other; and service on him might probably suffice in the case of a plaintiff suing on hundi-transactions as with the firm through him. Service unduly made under s. 76 does not become effectual by reason of the fact of such service being subsequently notified to the parties really interested as defendants. *Semble*.—Service duly effected under s. 76 is effectual without reference to the circumstance of its being or not being communicated to the real defendants.—Goculdas Dwarkadas of Hyderabad, carrying on business at Bombay under the name of Girdhar Lal Fateh Chand by his munim Moti Lal Buna Chand (Plaintiffs), *v.* Ganesh Lal Halasroy and others, carrying on business at Bombay under the firm of Ganesh Lal Soonder Lal (Defendants), I. L. R., 4 Bom. 416.

- M.S.C.C.** 38. Processes served on the recognized agent of a party to a suit
 Service of process on or appeal shall be as effectual as if the same
 recognized agent. has been served on the party in person, unless
 the Court otherwise directs.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

- M.S.C.C.** 39. The appointment of a pleader to make or do any appearance,
 application, or act as aforesaid, shall be in writing,
 Appointment of pleader. and such appointment shall be filed in Court.
 When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in Court, or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

- M.S.C.C.** 40. Processes served on the pleader of any party, or left at the office
 Service of process on or ordinary residence of such pleader, relative
 pleader. to a suit or appeal, and whether the same be
 for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

- M.S.C.C.** 41. Besides the recognized agents described in section 37, any
 person residing within the jurisdiction of the
 Agent to receive process. Court may be appointed an agent to accept
 service of process.

Such appointment may be special or general, and shall be made by an instrument in writing, signed by the principal; and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in Court.

His appointment to be in writing, and to be filed in Court.

CHAPTER IV.

OF THE FRAME OF THE SUIT.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Suit how to be framed.

IN DISPOSING of a second appeal, the High Court is competent, under Act X of 1877, s. 42, to consider the question whether the plaintiff has any cause of action or not, although such question has not been raised by the defendant-appellant in the Courts below or in his memorandum of second appeal, but is raised for the first time at the hearing of such appeal.—*Lachman Prasad v. Bahadur Singh*, I. L. R., 2 All. 884.

UNDER ss. 42 and 43 of the Civil Procedure Code, plaintiffs must bring their entire claim and every remedy enforceable in respect of that claim into Court at once; and, if they fail to do that in any suit, they cannot afterwards avail themselves of any remedy on which they have not chosen to insist in the first suit. Suits for enhanced rent, and suits for rent, are claims arising in respect of the same subject-matter, and a plaintiff cannot be allowed, after having unsuccessfully sued for rent at an enhanced rate, to sue for the original rent for previous years.—*Kunnoek Chunder Mookerjee v. Guru Dass Biswas*, I. L. R., 9 Cal 919.

R PURCHASED two houses under the same sale-deed. Four years afterwards he sued for possession of one of the houses, alleging that he had been dispossessed by the ancestor of the defendant. Subsequently he sued the same defendant for possession of the other, alleging that, at the time when he instituted the former suit, he had already been dispossessed of the house now in question, and by the same person. *Held* that although the plaintiff's title to both houses rested on the title acquired by him under one and the same sale-deed, yet the cause of action, viz., his ouster from the two houses on different occasions, gave rise to two separate causes of action, which he was not bound to join in the former suit, there being nothing in the Civil Procedure Code to compel him to do so. *Jardine Skinner and Co. v. Ranees Shama Soonduree Debia* (13 W. R. 196) and *Ram Sunder Saha v. Delanney* (20 W. R. 103) referred to.—*Riayatullah Khan v. Nasir Khan*, I. L. R., 6 All. 616.

43. Every suit shall include the whole of the claim which the M.S.C.O. plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Suit to include whole claim.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Relinquishment of part of claim.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

Omission to sue for one of several remedies.

For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881.

UNDER s. 7, read with ss. 8, 9, and 10 of Act VIII. of 1859, a plaintiff suing for mesne-profits of land is not precluded from afterwards maintaining a suit for possession of such land. *Pratap Chandra Burna v. Rani Swarnamayi* (4 B. L. R., F. B., 113) commented on.—*Monohur Lall v. Gouri Sunkur*, 9 I. L. R., Cal. 283.

WHERE there has been a suit between an agriculturist mortgagor and his mortgagee for an account merely, a subsequent suit for possession on payment of the money declared to be due is barred under either s. 13 or s. 43 of the Code of Civil Procedure.—*Bháu Báláji v. Hari Nilkanthráv*, I. L. R., 7 Bom. 377.

HELD, where two suits were instituted simultaneously, and one of such suits had been determined, that, assuming that the claims in such suits arose out of the same cause of action, and should have been included in one suit, the provisions of s. 7 of Act VIII. of 1859 were no bar to the entertainment of the second suit.—*Kaleshar Pershad (Plaintiff) v. Jagan Nath and another (Defendants)*, I. L. R., 1 All. 650.

WHERE a previous suit for a declaration of title and confirmation of possession of certain land has been dismissed on the ground that the plaintiff was not in possession at the time of filing the suit, a subsequent suit on the same title for recovery of possession of the land is not barred under s. 43. *Moonshee Buzloor Ruheem v. Shuinsonissa Begum* (11 Moore's I. A. 551) dissonsed.—*Jibunti Nath Khan and others v. Shib Nath Chuckerbutty*, I. L. R., 8 Cal. 819.

D, BEING able to sue for the possession of certain property, omitted to do so, and sued in the first instance only for a declaration of her right to such property. The Court refusing to make any such declaration, on the ground that she could sue for possession, D then sued for possession. *Held* that the second suit was not barred by s. 7 of Act VIII. of 1859. See also *Tulsiram v. Gungaram*, I. L. R., 1 All. 252.—*Darbo (Plaintiff) v. Kesho Rai (Defendant)*, I. L. R., 2 All. 356.

THE obligee of a bond for the payment of money, hypothecating immoveable property as a collateral security for such payment, sued for the moneys due on the bond, but omitted to claim the enforcement of his lien, and obtained a decree only for the payment of the amount of the bond-debt. He subsequently sued to enforce his lien. *Held* that, under Act X. of 1877, s. 43, as amended by Act XII. of 1879, s. 7, he could not be permitted to sue to enforce his lien.—*Gumani v. Ram Padarath Lal*, I. L. R., 2 All. 838.

IF A person intentionally omit to sue for any portion of his claim, the provisions of s. 43 of Act X. of 1877, as well as the provisions of s. 7 of Act VIII. of 1859, bar the institution of a second suit for the portion so omitted. So that, where a family property consisted of lands as well as debts, and the plaintiff at first sued for a partition of debts only, and then compromised and withdrew the suit without the permission of the Court, it was held that his second suit to demand a partition of the whole property was not maintainable.—*Ukhá v. Dagá*, I. L. R., 7 Bom. 182.

THE usufructuary mortgagee of certain land gave a lease of it to the mortgagor, the latter hypothecating the land as security for the payment of the rent. Arrears of rent accruing, the mortgagee sued the mortgagor for the same in the Revenue Court, and obtained a decree. Subsequently the mortgagee sued the mortgagor in the Civil Court to recover the amount of such decree by the sale of the land, claiming under the hypothecation. *Held* that the second suit was not barred by the provisions of s. 43 of Act X. of 1877.—*Banda Hassan v. Abadi Begam*, I. L. R., 4 All. 180.

HELD by the Full Bench (Stuart, C.J., dissenting) that the Courts of Revenue in the North-Western Provinces, in those matters of procedure upon which the Rent Act (XII. of 1881) of those Provinces is silent, are governed by the provisions of the Civil Procedure Code. The principle of decision in *Nilmoni Singh Deo v. Taranath Mukerjee* (I. L. R., 9 Cal. 295) followed. *Held*, therefore,

that the procedure provided by ss. 43 and 373 of the Civil Procedure Code is applicable to suits tried under the N. W. P. Rent Act, 1881.—*Madho Prakash Singh v. Murli Manohar*, I. L. R., 5 All. 406.

J HAD a right to share in a certain estate, as an heir to her father, and also as an heir to her brother. She transferred such right by sale to H. H sued S, who had acquired the whole estate by purchase at sales in execution of decrees against the other heirs of J's brother, for J's share as one of her brother's heirs in such estate, and obtained a decree. H then sued S for J's share as one of the father's heirs in such estate. *Held* that H was debarred from bringing the second suit by the provision of s. 43 of Act X. of 1877.—*Shafkat-un-nissa (Plaintiff) v. Shib Sahai and others (Defendants)*, I. L. R., 4 All. 171.

THE plaintiffs brought a suit to have themselves declared entitled to an account, and obtained such a declaratory decree without asking for or obtaining any consequential relief. The defendants took no steps to render an account, and the plaintiffs brought another suit against them "for the amount of such Company's papers and other debts that might be found due by the defendant on an adjustment of accounts." *Held* that the plaintiffs were not barred from bringing such suit, s. 15 of Act VIII. of 1859 being intended to modify the provisions of s. 7 of the same Act.—*Tulsi Ram v. Gunga Ram* (I. L. R., 1 All. 252) followed and approved.—*Kalidhun Chuttapadhya and another v. Shiba Nath Chuttapadhya*, I. L. R., 8 Cal. 483.

WHERE a plaintiff originally sued for a certain sum upon his khatta books, and an objection was taken by the defendant that he ought to have sued upon a hat-chitta, whereupon the plaintiff amended his plaint by suing for the amount admittedly due upon the hat-chitta, in addition to the amount he claimed upon his khatta-books, *held* that, when the plaintiff amended his plaint by suing upon the hat-chitta, his causes of action, which, when the suit was originally framed, were distinct, became united; that there was no *relinquishment* in the original suit within the terms of Act VIII. of 1859, s. 7 (corresponding with Act X. of 1877, s. 43); and that the plaint was rightly amended.—*Ram Tarrun Koondoo v. Hossein Buksh*, I. L. R., 3 Cal. 785.

THE plaintiffs sued the defendants for possession of the land upon which certain trees stood, and for such trees, stating that on the 19th June, 1879, the defendants had interfered with their possession of such trees, and had wrongfully taken the fruit thereof. The plaintiffs subsequently sued the defendants for the value of the fruit upon such trees, alleging that on the 19th June, 1879, the defendants had wrongfully taken such fruits. *Held* that, as the cause of action, i.e., the taking of such fruit, was in both suits identical, and the plaintiffs not having claimed the value of such fruit as mesne-profits in the first suit, the second suit was barred by the provisions of s. 43 of Act X. of 1877.—*Dabi Dial Singh and others (Plaintiffs) v. Ajaib Singh and others (Defendants)*, I. L. R., 3 All. 543.

WHEN money is due on two or more bonds at the time of the institution of a suit, and the bonds appear to have been originally passed in respect of one claim, it is not incumbent upon the plaintiff to sue upon both bonds in one action. There is nothing in s. 43 of the Code of Civil Procedure which would justify the Court in going behind the bonds to consider the circumstances out of which they sprung, albeit those circumstances might themselves at the time have constituted a cause of action. There is no provision in the Mofussil Small Cause Courts Act (XI. of 1865), similar to s. 34 of the Presidency Small Cause Court Act (IX. of 1850), which forbids a plaintiff's dividing any cause of action for the sake of bringing two or more suits in the Small Cause Courts of the Presidency.—*Umed Dholchand v. Pir Sáheb Jivá Miyá*, I. L. R., 7 Bom. 134.

AT the close of the Bengali year 1283, which was on the 11th April, 1877, the defendant owed to the plaintiff, his landlord, the rents of his holding for the years 1281, 1282, and 1283. The plaintiff, in the month of April, 1878, before the close of the year 1284, instituted a suit for the rent for 1281 only, and obtained a decree. On the 10th April, 1879, he instituted another suit for recovery of the rents for the years 1282, 1283, 1284. *Held* that the claim for the years 1282 and 1283 was barred under s. 43 of the Code of Civil Procedure. The cases of *Raja Sutto Churn Ghosal v. Obhoy Nund Das* (2 W. R., Act X. Rul., 31); *Ram Soondar Sein v. Krishno Chander*

Goopio (17 W. R. 380): and *Kristo Kinker Puramanik v. Randhan Chattangia* (24 W. R. 326), are overruled by s. 43 of Act X. of 1877.—*Tarnack Chunder Mookerjee* (Defendants) *v. Panchu Mohini Debya* (Plaintiff), I. L. R., 6 Cal. 791.

A KARNAVAN of a Malabar tarwad, having a right at any time to demand restoration of the property of the tarwad in the hands of the Anandravan, is not debarred by s. 13 or s. 43 from bringing a second suit to recover lands in the wrongful possession of an Anandravan, either by the fact that in a former suit between the same parties the karnavan only laid claim to some of the lands sued for, or by the fact that the former suit was dismissed upon the joint petition of the parties, alleging a compromise and a surrender of the lands which, as a fact, were not surrendered, but wrongfully retained by the Anandravan. An Anandravan has no right to the value of improvements effected by him on tarwad property upon surrender to the karnavan when such improvements are not made with private funds.—*Uramkumarath Kannan Nayar v. Uramkumarath Tenju Nayar* and another, I. L. R., 5 Mad. 1.

A BOND provided for the repayment of a loan with interest by a stated time. In default of payment by that time it was provided that the loan might be added to an existing mortgage for a term of years, and repaid at the end of the term, together with the mortgage-debt. After the expiration of the time fixed for the repayment of the loan, the obligee sued and obtained a decree for the interest which had accrued due at the date of the suit. He now sued for the further interest which had since become due. *Held* that the second suit was not barred by s. 43 of the Code of Civil Procedure, for that the first suit being for interest merely, and not for principal and interest, which were then both due, the plaintiff must be taken to have elected, under the bond, to add the principal sum to the previously existing mortgage-debt, in which case he forfeited nothing by suing merely for arrears of interest as they became due.—*Shri Shailapa v. Balapa Lokanna*, I. L. R., 7 Bom. 446.

A MORTGAGEE had two remedies in respect of the mortgagor's breach to pay the stipulated interest at the time fixed by the contract of mortgage, one being a suit on foreclosure-proceedings to convert the mortgage into a sale, and the other a suit to recover his money against his debtor by enforcement of his lien against the mortgaged property. He sued for the first remedy in respect of such breach, omitting the second. His suit was dismissed on the ground that he was not entitled to such remedy until the expiration of the mortgage-term. He afterwards sued for the second remedy. *Held* that inasmuch as the mortgagee was not, at the time of his suing for the first remedy, "a person entitled to more than one remedy," not being "entitled" to the first, but only to the second, his omission at that time to sue for the second remedy was not, under s. 43 of Act X. of 1877, a bar to his afterwards suing for it.—*Piari* (Defendant) *v. Khiali Ram* (Plaintiff), I. L. R., 3 All. 857.

S, as one of the heirs of his brother, sued the sons of M, the other heirs of M, for, amongst other things, a declaration of his right to share in the rights and interests of M as the mortgagee under a deed of mortgage, which he valued at the principal sum advanced under the mortgage, *viz.*, Rs. 5,600, stating his cause of action to be the obstruction caused by the sons of M to his sharing in M's estate. He obtained a decree declaring his title to the share claimed. L, one of the sons of M, had fraudulently concealed from, and kept S in ignorance of, the fact that previously to the suit he had realized Rs. 8,624 under the mortgage. On this fact coming to S's knowledge, he sued the sons of M to recover his share of that sum. *Held* that the second suit was not barred by s. 7 of Act VIII. of 1859. *Bulwant Singh v. Chittan Singh* (H. C. R., N. W. P., 1871, 27) followed and observed on—*Lachman Sing and others* (Defendants) *v. Sanwal Singh* (Plaintiff), I. L. R., 1 All. 543.

ACCORDING to the terms of a mortgage, possession of the mortgaged property was to be delivered to the mortgagee, and he was to take the mesne-profits. The mortgagor refused to deliver possession of the property, and the mortgagee sued him to enforce specific performance of the contract to deliver possession, and obtained a decree. At the time this suit was brought, the mortgagee had been kept out of possession of the property for two years, during which time the mortgagor had taken the mesne-profits. The mortgagee subsequently sued the mortgagor to recover the mesne-profits of the mortgaged property for those two years. *Held* that,

as the mortgagee might in the former suit, in addition to seeking the specific performance of the mortgage-contract, have asked for such mesne-profits by way of compensation for the breach of it, and as the claim for possession and mesne-profits were in respect of the same cause of action, *viz.*, the breach of the contract to give possession, the second suit was barred by the provisions of s. 43 of Act X. of 1877.—*Lalji Mul and another (Plaintiffs) v. Hulasi and another (Defendants)*, 1. L. R., 3 All. 660.

ON the 27th Joist 1286 F. S. (2nd June, 1879), the plaintiff brought a suit to recover damages for the breach of a contract on the part of the defendant, for not having made over possession to him of certain leasehold properties, the damages claimed being for the profits accrued due for the year 1283 F. S. (1875-6). In this suit he obtained a decree. On the 21st Joist 1287 F. S. (14th June, 1880), the plaintiff brought another suit against the defendant to recover damages for the profits accrued for the years 1284, 1285, and 1286 F. S. (1876-7 to 1878-9). *Held* that the plaintiff should have included the damages for the years 1284 and 1285 (1876-7 and 1877-8) in his former suit, and that he was debarred by s. 43 of Act X. of 1877 from including in his second suit any portion of his claim for damages which had accrued due at the time of the institution of his first suit, and for which he had omitted to sue; but that he was entitled to recover damages for the year 1286 (1878-9). *Taruck Chunder Mookerjee v. Panchu Mohini Debya* (1. L. R., 6 Cal. 791) followed.—*Sheo Shunkur Sahoy v. Hidooy Nairan*, 1. L. R., 9 Cal. 143

THE plaintiff held a mortgage of certain immoveable property given to him by the defendant to secure the repayment of a loan of money with interest. The plaintiff stated the fact of the mortgage, but prayed only for a money-decree. The mortgage contained a personal undertaking to repay. Plaintiff's counsel, directly upon the case being called on for hearing, and before the case had in any way been gone into, applied (under s. 43 of Act X. of 1877, Civil Procedure Code) for leave to reserve his remedies under the mortgage, taking then only a money-decree, an application which, it is provided by that section, must be made "before the first hearing." *Held* that the application was not too late. The said mortgage was dated 16th February, 1870, and the plaintiff in this suit was filed on the 28th April, 1881. The plaintiff maintained that he was not time-barred, as he had twelve years within which to bring the suit under art. 132 of sch. ii. of Act XV. of 1877. *Held* that the plaintiff was too late in bringing a suit for a money-decree on the promise to pay in the mortgage, inasmuch as the article referred to was meant to apply to suits brought to enforce against the property payment of "money charged upon immoveable property," and not, under any circumstances whatever, to a suit for a mere money-decree.—*Pestonji Bezonji v. Abdool Rahiman Bin Shaik Budoo*, 1. L. R., 5 Bom. 463.

ON THE 1st July, 1878, there was a settlement of accounts between the plaintiff and defendants, and a debt was acknowledged due by the latter to the former; and, on the same day, the plaintiff and defendants entered into a trading partnership which was carried on till August. On the 30th September the defendants extorted a release from the plaintiff, whereby the plaintiff's claims against them, arising out of the two transactions mentioned, and all other transactions between them, were released. On the 23rd November the plaintiff brought a suit against the defendants, and, in the plaint, after stating the fact of the settlement of 1st July, 1878, the balance found due therein to the plaintiff, the extortion of the release, and the misappropriation of the sums due to the plaintiff by the defendants as the cause of action, prayed for cancellation of the release and for recovery of the amount due to the plaintiff by the defendants under the settlement of 1st July, 1878. *Held*, in a suit to wind up the partnership of July and August, 1878, that the plaintiff was not bound by s. 43 of the Code of Civil Procedure to have included in his former suit his claim arising out of that partnership, and that the former suit, being in substance a suit upon the account stated on 1st July, 1878, and not for damages for extorting the release, was no bar to the present suit.—*Subbayya v. Venkatéappa*, 1. L. R., 6 Mad. 49.

A MORTGAGEE brought a suit against the mortgagor to have a declaration of his lien over the mortgaged properties, and obtained a decree. He afterwards brought another suit against certain attaching creditors of his mortgagor, to have a declara-

tion of his lien over certain surplus moneys in the hands of the Collector, who, previous to the institution of the first suit, had sold certain of the mortgaged properties free of all incumbrances for arrears of Government revenue. *Held* that the second suit was not barred under Act VIII. of 1859, s. 7. *Held* also that the mortgage-decree declaring the lien over all the mortgaged properties covered the surplus sale-proceeds then in the hands of the Collector, because these moneys must, as between the mortgagee and attaching creditors of the mortgagor, be taken to represent the mortgaged properties. *Heera Lal Chowdhry v. Jankee Nath Mookerjee* (16 W. R. 222) followed. The doctrine of marshalling does not apply as between a mortgagee and attaching creditors of the mortgagor who hold mere money-decrees. The period of limitation prescribed by art. 15, sch. ii., Act IX. of 1871, for a suit to set aside an order of a Civil Court, does not apply where the order simply amounts to a declaration that the Court considers it has no jurisdiction to act in the proceeding before it.—*Kristo Das Kundoo and another (Defendants) v. Ramkant Roy Chowdhry (Plaintiff)*, I. L. R., 6 Cal. 142.

A, a Hindu widow, granted, without legal necessity, a mukarrari lease of certain mauzas, portion of her husband's estate, to B. During B's possession part of the lands comprised in the granted mauzas were taken up by Government, and the compensation-money was lodged in the collectorate. A having afterwards died, the next heirs of A's husband, on the 7th October, 1871, sued B to recover possession of the mauzas, but, not being aware of the facts, did not in that suit claim the compensation-money lying in the collectorate. While this suit was still pending, B, in March, 1872, drew the compensation-money out of the collectorate. The heirs, after obtaining a decree against B for possession of the mauzas on the 13th September, 1875, instituted a fresh suit against him to recover the compensation-money wrongfully drawn out by him from the collectorate. *Held*, first, that the suit was not barred by s. 7 of Act VIII. of 1859. *Held* also that it was not barred by limitation, although more than three years had elapsed since the money had been drawn out by B, art. 118, and not art. 60 of sch. ii. of the Limitation Act (IX. of 1871) applying to the case. *Held*, further, that the claim of the heirs was a proper subject for a regular suit, and could not have been heard and determined in the course of the proceedings in execution of the decree which they had obtained against B for possession of the mauzas.—*Nand Lal Bose and another (Plaintiffs) v. Mir Aboo Muhammad and others (Defendants)*, I. L. R., 5 Cal. 597.

In 1868 B made, it was alleged, a gift of a zamindari estate to K. In 1869 B died, and K's name was recorded in the revenue-registers in the place of B's name in respect of the estate. In 1870 K died, and her daughter S applied to have her name recorded in the revenue-registers in respect of the estate. M, the illegitimate son of B, objected, claiming to have his name recorded. His objection having been disallowed, and S's name having been recorded, M, in 1876, sued S for a declaration of his proprietary right to the estate, and on the 29th June, 1878, obtained such declaration. In January, 1880, M sold a moiety of the estate, and in December, 1880, S sold the entire estate. In February, 1881, M's transferees sued S and her transferee for possession of the moiety of the estate transferred to them by M. *Held* by the Full Bench (Stuart, C.J., dissenting) that such suit was not barred by the provisions of s. 7 of Act VIII. of 1859, by reason that M had omitted to claim in the suit of 1876 possession of the estate. *Darbo v. Kesho Rai* (I. L. R., 2 All. 356), and *Kalidhun Chuttapadhyaya v. Shiba Nath Chuttapadhyaya* (I. L. R., 8 Cal. 483), followed. *Held* also that the possession of S and her transferee could be considered adverse only from the date of the decree of the 29th June, 1878, declaring M's proprietary title to the estate. *Radha Gobind Roy v. Inglis* (7 C. L. R. 364; S. C., 3 Suth. P. C. C. 809) referred to. *Held* by Stuart, C.J.—That such suit was barred by the provisions of s. 7 of Act VIII. of 1859, by reason of such omission. *Darbo v. Kesho Rai* (I. L. R., 2 All. 356) distinguished. The meaning of the term "relief" explained, and the distinction between it and the term "cause of action" pointed out.—*Sarsuti v. Kunj Behari Lal*, I. L. R., 5 All. 345.

In 1876 accounts were stated between B and D, and a balance of Rs. 800 was found to be due from D to B. D gave B an instrument whereby he agreed to pay the amount of such balance in four annual instalments of Rs. 200. B at the same time noted in his account-book that such balance was "payable in four instalments

of Rs. 200 yearly." In July, 1879, B sued D upon such instrument for the balance of the first instalment. The Court trying this refused to receive such instrument in evidence on the ground that it was a promissory note, and as such was improperly stamped. Thereupon B applied for and obtained permission to withdraw from the suit with liberty to bring a fresh one for the original debt. In October, 1879, B again sued D, claiming the balance of the first and second instalment, basing his claim upon the note made by him in his account-book. He obtained a decree in this suit for the amount claimed by him. In 1880, B again sued D, claiming the amount of the third instalment, again basing his claim upon such note. *Held* by Spinkie, J., that the suit last-mentioned was barred by the provisions of s. 43 of Act X. of 1877, inasmuch as B should, in the second suit brought by him against D, have claimed the balance of the money found due from D to him upon the accounts stated between them, instead of claiming the balance of the instalment due. *Held* by Oldfield, J., that such suit was not so barred, the cause of action therein and in the former suit being different. *Held* by the Court that the agreement by D to pay the balance found due from him to B on accounts stated between them in instalments of Rs. 200 annually could not be proved by the note made by B in his account book, but could only be proved by the promissory note.—*Benarsi Das (Plaintiff) v. Khikhari Das (Defendant)*, I. L. R., 3 All. 717.

In 1876, K sued M on a bond, dated 25th December, 1869, for Rs. 5,000, by which certain land in the district of South Tanjore was hypothecated as security for the debt, and obtained a decree on the 6th of April, 1876, for the sale of the lands, which he purchased on the 17th August, 1876, for Rs. 6,000. K then discovered that part of the land hypothecated, situated within the jurisdiction of the Subordinate Court at Kumbakonam, had been acquired by a railway company under the Land Acquisition Act in 1874, and that the compensation, Rs. 460 (claimed by M's mother, who sold the land to the company), was lodged in the treasury of Kumbakonam in the name of M's mother. K having applied to the Subordinate Court for an order for payment out of this sum, the Court, by order dated 28th February, 1880, directed that the question of title to the money should be decided by suit. K then sued M as the sole heir of his deceased mother in the District Munsif's Court of Tiruvadi (where M resided) for a declaration of right to and to recover the said sum of Rs. 460. The suit was filed on the 4th September, 1880. On the 16th April, 1880, M assigned his interest in the money sued for to V, who was made defendant in the suit on his own application, and pleaded (1) that the Court had no jurisdiction, as both the money and the land which it represented were, and he (V) resided, without the Munsif's Court's jurisdiction; (2) that the land having been acquired by the railway company in 1874, before the suit upon the bond was filed, this suit was barred by s. 43 of the Code of Civil Procedure; (3) that this suit was barred by limitation, inasmuch as more than three years had elapsed since the money was paid by the railway company. *Held* (1) that the suit was for money, and that V, not having applied to stay proceedings under s. 20 of the Code of Civil Procedure, must be held to have acquiesced in the jurisdiction of the Court; (2) that K, not having known, at the date of his suit on the bond, of the acquisition of the land by the railway company, this suit is not barred by s. 43 of the Code of Civil Procedure; (3) that the suit was not barred by limitation, as the compensation was awarded to M's mother either through fraud on her part or mistake on the part of the Collector, and K did not become aware of the fraud or mistake until within six years of the suit (arts. 95, 96, of sch. ii. of the Indian Limitation Act).—*Vīrarāgava v. Krishnasāmi*, I. L. R., 6 Mad. 344.

- 44. Rule a.**—No cause of action shall, unless with the leave of the **M.S.C.G.** Court, be joined with a suit for the recovery (except rule a.) of immoveable property, or to obtain a declaration of title to immoveable property, except—
- (a) claims in respect of mesne-profits or arrears of rent in respect of the property claimed,
 - (b) damages for breach of any contract under which the property or any part thereof is held, and

(c) claims by a mortgagee to enforce any of his remedies under the mortgage.

Rule b.—No claim by or against an executor, administrator, or heir

Claims by or against executor, administrator, or heir. as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate

in respect of which the plaintiff or defendant sues or is sued as executor, administrator, or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

S. 44 of the Code of Civil Procedure, 1877, does not forbid the joinder of several causes of action entitling the plaintiff to the recovery of immoveable property, but a joinder with such causes of action of other causes of action of a different character except in the cases therein specified.—*Chidambara Pillai v. Ramasami Pillai* and others, I. L. R., 5 Mad. 161.

THE plaintiff sued for specific performance of an agreement in writing, which set forth (*inter alia*) that the defendants had agreed to sell, &c., under certain conditions as agreed upon. The defendants alleged that the written agreement did not contain the whole of the agreement between the parties, and offered parol evidence in support of their contention. *Held* (reversing the judgment of Wilson, J.) that the parol evidence was admissible to show what was meant by the clause "certain conditions as agreed upon." *Per* Pontifex, J. (Garth, C.J., dissenting)—The evidence was admissible under proviso 1, s. 92 of the Evidence Act (I. of 1872). Discussion as to the meaning of s. 92 of the Evidence Act, and of ss. 17, 22, and 26 of the Specific Relief Act. *Per* Pontifex, J.—It is of the essence of specific performance that part only of an agreement should not be performed. Part of the purchase-money had been advanced by the plaintiffs to the defendants, for which the defendants had given their promissory notes; and the plaint contained a prayer that the defendants be ordered to pay over the amount of the notes. *Held* (affirming the decision of Wilson, J.) that there was no misjoinder of causes of action within the meaning of s. 44, rule a of the Code of Civil Procedure (Act X. of 1877).—*G. M. Cutts v. T. F. Brown*, I. L. R., 6 Cal. 328.

A PLAINTIFF sued on the 28th February, 1881, for specific performance of a contract entered into on the 1st March, 1878, by defendant No. 1, and joined in that suit as a defendant a third person, who alleged that he was the owner of the property, the subject of the contract, seeking to obtain possession and other relief as against such third person, stating that he was a benamidar of defendant No. 1. Such third person contended in his written statement that the suit was multifarious, but the point was not decided in the lower Courts. On second appeal, such third person contended that the discretion given to the Court under s. 22 of the Specific Relief Act ought not to be exercised, as the plaintiff had slept on his rights for nearly three years; and also contended that the suit was multifarious, and that he ought not to have been made a party thereto. *Held* that although the principle of the objection, as to the delay of the plaintiff in bringing his suit, was an important one, and one which ought to be considered by the Courts in the exercise of their judicial discretion under s. 22 of the Specific Relief Act, yet the point not having been taken in the Courts below, and there being nothing on the record to lead the Court to presume that the ordinary rule applicable to suits of this nature had been disregarded in the Courts below, the objection ought not, under the circumstances, to be allowed to prevail in second appeal. *Held* also, *per* Mitter, J. (Pigot, J., dissenting), that as regards the objection to the suit, for misjoinder, and under s. 44 of the Code of Civil Procedure, the Appeal Court was precluded by s. 578 of the Code from reversing the decree of the lower Court, as the error (if an error at all) could not affect the merits of the decision. *Held* also that the principle laid down in the cases of *De Houghton v. Money* (I. L. R., 2 Ch. App. 166), and *Luckumsey Oorkerda v. Fazulla Cassumbhoy* (I. L. R., 5 Bom. 177), is only applicable where, from the plaintiff's case, it appears that a third party, not a party to the contract, has a distinct interest from that of the other parties to the contract, which interest is sought to be declared null and void.—*Mokund Lall v. Chotay Lall*, I. L. R., 10 Cal. 1061.

In the mufassal of this presidency the transfer of the ownership of immoveable property to a vendee who has obtained a decree ordering the specific performance of the contract of sale to himself does not wait for the execution of a conveyance—even if the vendor is required, as he seldom is, to execute such a conveyance—but is affected by the passing of the decree itself, coupled with the payment of the purchase-money. A entered into an agreement with B for the purchase of moveable and immoveable property, and paid a deposit. Under such an agreement, by s. 85 of the Indian Contract Act, the ownership of the moveable property would not pass before the transfer of the immoveable property. B, instead of conveying to A the property agreed to be conveyed to him, conveyed it to C, and put him, C, in possession. A brought a suit against C and B, and obtained a decree, setting aside the conveyance to C, and ordering B specifically to perform his contract and execute a conveyance of the property to himself, A. This decree was confirmed on appeal. B refusing to execute the conveyance to A, the conveyance was executed by the Court under the provisions of s. 202 of Act VIII. of 1859. C still detaining possession of the moveable and immoveable property in question, A brought this suit against him to recover possession of the same. The suit was brought within three years of the final decree of the Court of Appeal in the former suit, ordering a conveyance of the property to be executed to A, but not within three years of the date of agreement to purchase, and it was contended that as to the *moveable* property the suit was time-barred. *Held* that the suit for the possession of the moveable property was not time-barred, as the right to possession of both moveable and immoveable property accrued to A, at the earliest, on the date of the final decree for specific performance of the agreement of sale, and it was from that time that the “detainer’s possession” first became unlawful under art. 49, sch. ii. of Act XV. of 1877. An objection that the plaintiff has joined together causes of action which, by s. 44 of the Civil Procedure Code, may not be joined together without leave first obtained, is taken too late if it is taken for the first time in the Court of Appeal after the case has been already heard on its merits.—Dhondiba Krishnaji Patel and another (Original Plaintiffs), Appellants, v. Ram Chandra Bhagvata and others (Original Defendants), Respondents, I. L. R., 5 Bom. 554.

45. Subject to the rules contained in Chapter II. and in section 44, M.S.C.O.

Plaintiff may join several causes of action the plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion, or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

Two co-sharers of a village, holding separate shares, sold their shares separately to the same person, upon which a third co-sharer of the village sued them and the vendor jointly to enforce his right of pre-emption in respect of the sales. *Held* that the frame of the suit was bad by reason of misjoinder of defendants and causes of action, and the suit had been properly dismissed on that ground.—Bhagwati Prasad Gir v. Bindeshri Gir, I. L. R., 6 All. 106.

A STRANGER to a contract of which specific performance is sought cannot be a party to the suit. Where, therefore, the plaintiff sued as against one defendant for specific performance of a contract to sell land, and as against another for a declaration that he was not entitled to any charge upon the said lands, *held* that the latter defendant was improperly made a party to the suit.—*Luckumsey Ookerda (Plaintiff) v. Fazulla Cassumbhoy and others (Defendants)*, I. L. R., 5 Bom. 177.

THE plaintiffs sued for a declaration that the several alienations made by defendant No 1 (a Hindú widow) to the other defendants were void, and that they (the plaintiffs) were entitled to the several properties after her death; also for an injunction, restraining her from making similar unlawful alienations in the future. *Held* that the suit as framed was not maintainable, inasmuch as it included within it several distinct causes of action, which, under s. 45 of Act X. of 1877, could not be joined together in the same suit. The course which should be adopted by a Court or Judge, where there has been such a misjoinder of causes of action, discussed.—*Káchár Bhoj v. Bai Rathore*, I. L. R., 7 Bom. 289.

S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindú and her adopted son sued as co-plaintiffs, claiming in the alternative either to recover the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, *held* that the suit was bad for misjoinder. *Held* also that when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it, by returning the plaint for amendment. *Farzand Ali v. Yusuf Ali* (I. L. R., 2 All. 669) dissented from.—*Lingammál v. Venkatammál*, I. L. R., 6 Mad. 289.

IN A SUIT instituted against six different parties, plaintiff prayed for *khás* possession of a four-anna share in a certain lot, or, in the alternative, for a decree for arrears of rent against the defendants, or such of the defendants as should, on enquiry, appear to be respectively liable. It appeared that plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears. *Held* (with reference to Act X. of 1877, ss. 31 and 45) that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for joinder of causes of action.—*Janokinath Mookerjee v. Ramrunjun Chuckerbutty*, I. L. R., 4 Cal. 949.

THE sons of R and of K and of S possessed proprietary rights in two *maháls* of a certain *mauza*. P possessed proprietary rights in one of those *maháls*. In April, 1879, the sons of R sold their proprietary rights in both *maháls* to G. In August, 1879, the sons of K sold their proprietary rights in both *maháls* to G. Later in the same month the sons of S sold their proprietary rights in both *maháls* to N. G sued N to enforce a right of pre-emption in respect of the sale to the latter, and obtained a decree. P then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the *mahál* of which he was a co-sharer, joining as defendants G and N and the vendors to them. G alone objected in the Court of first instance to the frame of the suit. That Court overruled the objection, and gave P a decree. The lower Appellate Court reversed this decree on the ground of misjoinder. *Held* that in respect of G there was no misjoinder, but that in respect of the other defendant there was misjoinder of both causes of action and parties. Inasmuch as, however, G alone objected to the frame of the suit, and the defect did not affect the merits of the case or the jurisdiction of the Court, the lower Appellate Court ought not, regard being had to s 578 of Act X. of 1877, to have reversed the decree of the Court of first instance by reason of such defect.—*Kalian Singh (Plaintiff) v. Gur Dayal (Defendant)*, I. L. R., 4 All. 163.

DEFENDANT No. 1, the tenant of certain land at fixed rates, on the 12th November, 1877, sold his interest in the land to the plaintiff. At the time of the sale the

land was in the actual possession of defendant No. 2, defendant No. 1's sub-tenant, against whom, however, defendant No. 1 had obtained an order for ejectment on the 25th June preceding. On the 25th March, 1878, defendant No. 1 applied a second time for the ejectment of defendant No. 2, and while this matter was pending the plaintiff endeavoured to obtain possession of the land, but was resisted by defendant No. 2. He thereupon instituted a charge of criminal trespass against the latter. This criminal proceeding was pending when, on the 14th September, 1878, defendant No. 1 obtained a second order for defendant No. 2's ejectment. Under this order he obtained possession of the land, and also of the crops planted by defendant No. 2, which he sold to defendant No. 3 on the 22nd September, 1878. On the 25th of the same month the plaintiff's charge of criminal trespass against defendant No. 2 was dismissed, on the ground that defendant No. 1 was in possession, and the plaintiff had never obtained possession under his purchase. Defendant No. 1 subsequently let the land to defendant No. 4. The plaintiff, alleging that three causes of action had accrued to him—*viz.*, on the 12th November, 1877, the date of the sale to him—(i.) on the 30th March, 1878, when defendant No. 1 applied a second time for the ejectment of defendant No. 2—and (iii.) on the 22nd September, 1878, when defendant No. 1 took possession of the land—sued defendants Nos. 1, 2, 3, and 4, claiming (i.) possession of the land as against them all; (ii.) mesne-profits by way of damages for the year 1255 Fasli (September, 1877-September, 1878) as against defendants Nos. 1 and 2; (iii.) mesne-profits by way of damages for 1286 Fasli (September, 1878-September, 1879) against defendants Nos. 1 and 3; and (iv.) mesne-profits by way of damages for 1287 Fasli (September, 1879-September, 1880) against defendants Nos. 1 and 4. *Held* by the Full Bench (Mahmood, J., dissenting) that the Court of first instance had properly rejected the plaint, the suit being open to the objection that different causes of action against different defendants separately had been joined, for which procedure no sanction was to be found in the Code of Civil Procedure.—*Narsingh Das v. Mangal Dubey*, I. L. R., 5 All. 163.

C SUE D P to recover possession of certain lands. The plaintiff and defendant were members of the same family, and at the hearing of the suit the appellants, who were also members of the family, applied to be made parties, alleging that the suit was collusive, and that they were in possession of some of the lands which the plaintiff sought to recover, and wished to defend their possession. The Subordinate Judge granted their application, and made them co-defendants in the suit. They filed written statements setting forth their right, and time was allowed in order that the plaintiff might put in a counter statement. Before the case came on again, the Subordinate Judge had been removed, and his successor was of opinion that the causes of action, as against the original defendant P and as against the new defendants (the appellants), were different, and ought to be the subject of different suits. He accordingly dismissed the appellants from the suit under s. 45 of the Civil Procedure Code (XIV of 1882), and ordered that they should bear their own costs. *Held* on appeal to the High Court that the order dismissing the appellants from the suit should be reversed, and that s. 45 did not apply. When the parties concerned, though in different relation, in a particular litigation, are all before the Court, and their cases have been stated, the Court, if it finds the several causes as between plaintiff and the several defendants cannot properly or conveniently be tried together, should deal with them separately as sub-suits under the title and number of the principal suit from which they spring. The dismissal of defendants added without objection, or the addition of whom has been submitted to, is not contemplated, and would tend to further needless expense. The power given by s. 45 does not extend to an order for the dismissal of defendants, and that a fresh suit should be brought against them. Such an order would not be one for the "separate disposal" of the several causes of action; it would be an order preventing the disposal of them in the suit before the Court. S. 45 is meant to apply to cases in which questions arise as to the joinder or severance of several causes of action against the same defendant. For non-joinder or misjoinder of parties provision is made in s. 32, and the plaintiff had not resisted the joinder of the appellants as defendants. The Subordinate Judge could only strike out the name of a party upon an application being made, and no such application had been made.—*Khadar Sáheb v. Chotibibi*, I. L. R., 8 Bom. 616.

M.S.C.C. 46. Any defendant, alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit, may, at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit.

M.S.C.C. 47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

CHAPTER V.

OF THE INSTITUTION OF SUITS.

M.S.C.C. Suits to be commenced by plaintiff. 48. Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

M.S.C.C. 49. The plaint must be distinctly written in the language of the Court; provided that, if such language is not English, the plaint may (with the permission of the Court) be written in English; but in such case, if the defendant so require, a translation of the plaint into the language of the Court shall be filed in Court.

M.S.C.C. Particulars to be contained in plaint. 50. The plaint must contain the following particulars:—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description, and place of residence of the plaintiff;
- (c) the name, description, and place of residence of the defendant, so far as they can be ascertained;
- (d) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;
- (e) a demand of the relief which the plaintiff claims; and
- (f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

In money-suits.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount so far as the case admits.

In a suit for mesne-profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

When the plaintiff sues in a representative character, the plaintiff should shew, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute a suit concerning it.

Illustrations.

- (a.) A sues as B's executor. The plaintiff must state that A has proved B's will.
- (b.) A sues as C's administrator. The plaintiff must state that A has taken out administration to C's estate.
- (c.) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaintiff must state that A has been specially appointed D's guardian.

The plaintiff must shew that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Illustration.

A dies, leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaintiff must shew that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaintiff must shew the ground upon which exemption from such law is claimed.

IN ALL cases, whether a plaintiff is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge, and what paragraphs he believes to be true from the information of others.—In the matter of Upendro Lall Bose, I. L. R., 6 Cal. 675.

THERE is no law at present in force in the mufassal which obliges a person, claiming under a will, to obtain probate of the will, or otherwise establish his right as executor, administrator, or legatee before he can sue in respect to any property which he claims under the will. In any suit or proceeding instituted by him, it is for the Court, in which the suit or proceeding is pending, to determine, for the purposes of such suit or proceeding, whether the will is genuine and valid, and confers upon the plaintiff or applicant the right which he claims.—Bhagvansang Bhairaji (Applicant) v. Becharadas Harjivandas (Opponent), I. L. R., 6 Bom. 73.

IT is not necessary to obtain the leave of the High Court under cl. 12 of the Letters Patent to sue to set aside a decree of that Court, made upon a compromise to which the plaintiff has been induced by the misrepresentation of the defendant to agree, even when it appears from the plaint that the defendants are outside the jurisdiction of the Court. To describe the plaintiff as residing in Chitpore Road in the town of Calcutta, is not a sufficient description, under s. 50 of the Civil Procedure Code, of his place of abode; nor is it sufficient under that section to describe the defendant as formerly of Calcutta, without alleging that the plaintiff has been unable to ascertain his place of residence more definitely. Where the plaintiff alleges matter which cannot be personally known to the person making the verification, and which is not stated to be an information and belief, a verification which does not distinguish how much is true to the knowledge of the person making it, and what is alleged to be true on information and belief, does not fulfil the requirements of s. 52.—Bibee Sulaiman by her next friend Syad Ahmed (Plaintiff) v. Abdool Azeez and others (Defendants), I. L. R., 4 Cal. Law Rep. 366.

M.S.C.O. 51. The plaint shall be signed by the plaintiff and his pleader
Plaints to be signed and (if any), and shall be verified at the foot by the verified, plaintiff, or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case :

Provided that, if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

A PLAINT, signed by a person holding a general power-of-attorney to sue on behalf of the plaintiff, is properly signed within the meaning of the proviso in Act X of 1877, s. 51 (as amended by Act XII. of 1879).—*H. Kastolino v. Rustomji Dádábhai*, I. L. R., 4 Bom. 468 (F. B.)

IN all cases, whether a plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge, and what paragraphs he believes to be true from the information of others.—In the matter of Upendro Lall Bose, I. L. R., 6 Cal. 675.

M.S.C.O. 52. The verification must be to the effect that the same is true to
Contents of verification. the knowledge of person making it, except as to matter stated on information and belief, and that as to those matters he believes it to be true.

Verification to be signed and attested. The verification shall be signed by the person making it.

IN all cases, whether a plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge, and what paragraphs he believes to be true from the information of others.—In the matter of Upendro Lall Bose, I. L. R., 6 Cal. 675.

THE Court must be satisfied, under s. 52, that a person, other than a plaintiff verifying the plaint, is acquainted with the facts of the case ; but in the case of a person holding a general power-of-attorney, or of any other recognized agent, the Court will not insist on any extreme stringency of proof. S. 52 does not require the verification of a plaint to be made in the presence of an officer of the Court ; but having regard to the necessity of satisfying the Court that the person, other than the plaintiff, who verifies the plaint, is acquainted with the facts of the case, it is desirable that a verification by such a person should be made in the presence of the Court, unless the Court be satisfied that there is sufficient ground for dispensing with its attendance.—*H. Kastolino v. Rustomji Dádábhai*, I. L. R., 4 Bom. 468 (F. B.).

IT is not necessary to obtain the leave of the High Court under cl. 12 of the Letters Patent to sue to set aside a decree of that Court, made upon a compromise to which the plaintiff has been induced by the misrepresentation of the defendant to agree, even when it appears from the plaint that the defendants are outside the jurisdiction of the Court. To describe the plaintiff as residing in Chitpore Road in the town of Calcutta, is not a sufficient description, under s. 50 of the Civil Procedure Code, of his place of abode ; nor is it sufficient under that section to describe the defendant as formerly of Calcutta, without alleging that the plaintiff has been unable to ascertain his place of residence more definitely. Where the plaint alleges matter which cannot be personally known to the person making the verification, and which is not stated to be an information and belief, a verification which does not distinguish how much is true to the knowledge of the person making it, and what is alleged to be true on information and belief, does not fulfil the requirements of s. 52.—*Bibee Sulaiman by her next friend Syad Ahmed (Plaintiff) v. Abdool Azeez and others (Defendants)*, 4 Cal. Law Rep. 366.

M.S.C.O. 53. The plaint may, at the discretion of the Court, and at or before
When plaint may be re- the first hearing, be rejected, returned for rejected, returned for amend- amendment within a time to be fixed by the ment, or amended. Court, or amended then and there, upon such

terms as to the payment of costs occasioned by the amendment as the Court thinks fit,

(a) if it does not state correctly and without prolixity the several particulars hereinbefore required to be specified therein; or

(b) if it contains any particulars other than those so required; or

(c) if it is not signed and verified as hereinbefore required; or

(d) if it does not disclose a cause of action; or

(e) if it is not framed in accordance with section 42; or

(f) if it is wrongly framed by reason of non-joinder or misjoinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same suit:

Provided that a plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character.

Proviso.

Attestation of amendment.

When a plaint is amended, the amendment shall be attested by the signature of the Judge.

WHERE, at the first hearing of a suit, the plaint is returned for amendment within a fixed time under the provisions of Act X. of 1877. s. 53, and it is amended accordingly, it cannot afterwards be again returned for amendment.—*Badr-un-nissa v. Muhammad Jan*, I. L. R., 2 All 671.

WHERE, after a trial has begun, or even after it has concluded, it appears that the Court has not jurisdiction to hear the case, the plaint should be returned in order that it may be presented to the proper Court, and no additional court-fees are payable. The pre-existing state of the law as recognized by the tribunals is one of the chief means of interpreting laws of procedure.—*Jagjivandás Javherdás Sethi v. Magdum Ali* (I. L. R., 7 Bom. 487) overruled.—*Prabhakarbhat v. Vishwanbhar*, I. L. R., 8 Bom. 313.

WHERE a plaintiff's claim as originally stated in his plaint was based on the allegation of the invalidity of a will, an application at the hearing of the case to amend the plaint by inserting a clause submitting that, even if the will were valid, it did not dispose of the whole of the testator's property, was refused.—the Court holding, under s. 53 of the Civil Procedure Code (Act XIV. of 1882), that the case made by the proposed amendment would be inconsistent with the case made in the plaint as originally framed.—*Dámodar Mádhawji v. Purmánandás Jeevandás*, I. L. R., 7 Bom. 155.

WHERE a plaintiff alleged that M, the deceased widow of S, a Hindú, while administering the estate of her deceased husband, borrowed money from plaintiff for purposes binding on the estate, and executed a promissory note to secure the payment of the same, and that the first and second defendants, as reversionary heirs of S, and the third defendant, were in possession of the estate of S, and refused to pay the debt incurred by M, *held* that the plaint was properly rejected as disclosing no cause of action against the defendants.—*Ramasami Mudaliar v. Sellattammal and others*, I. L. R., 4 Mad. 375.

THE plaintiff in a suit applied for the amendment of the plaint. The defendant objected to the amendment, and a day was fixed by the Court for the "admission or rejection of the petition, and the determination of the defendant's objections thereto." The Court, after hearing the parties, made an order allowing the "petition of amendment," and rejecting the defendant's objections. The defendant appealed from such order to the High Court. *Held* that, inasmuch as orders amending plaints then and there are not made appealable by Act X. of 1877, and it was into this category, if into any at all, that such order must fall, such order was not appealable.—*Rajindra Kishore Singh (Defendant) v. Rada Prosad Singh (Plaintiff)*, I. L. R., 3 All 854.

S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindú and her adopted son sued as co-plaintiffs, claiming in

the alternative either to recover the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, *held* that the suit was bad for misjoinder. *Held* also that when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it, by returning the plaint for amendment. *Farzand Ali v. Yusuf Ali* (I L. R., 2 All. 669) dissented from.—*Lingammál v. Venkatammál*, I. L. R., 6 Mad. 239.

IN a suit for confirmation of possession and declaration of title in respect of land, where the plaint did not disclose any facts from which it could be said that the defendants denied the plaintiffs' title, but from the proceedings in the original cause it was established that, before the suit was brought, there was a dispute existing between the parties as regards the title, and that a decree in favour of the plaintiffs had been passed by the original Court on the merits of the case, *held* that though the plaint might have been rejected in the first instance under s. 53 of the Civil Procedure Code, on the ground that it did not disclose any cause of action, it was too late for an Appellate Court to reverse the decree solely on that ground, without being satisfied that no such cause of action was established on the evidence.—*Shah Ahmed Suiad and another (Plaintiffs) v. Taree Rai and others (Defendants)*, I. L. R., 7 Cal 343.

S. 53 of the Civil Procedure Code, which provides that a plaint cannot be amended so as to convert a suit of one character into a suit of another and inconsistent character, does not prevent a plaintiff, who has been ousted after suit brought for declaration of title, from amending his plaint by adding a prayer for possession. If the congregation of a church as a body cease to follow the observances of a particular form of worship, and in preference for forty years follow those of a different form of worship, there would be no one left for whom and by whom the original form of worship can be continued, the objects of the original trust cease to exist, and the church-funds and property become impressed with a trust for the performance of the later form of worship. Where a defendant out of the jurisdiction of the Court was summoned to produce a letter, and did not comply with the summons, but appeared by pleader at the last moment at the hearing of the suit, and service of notice on the pleader to produce the letter would have been nugatory, secondary evidence of the contents of the letter was admitted under s. 66, proviso 6 of the Evidence Act.—*Bishop Mellus v. Vicar Apostolic of Malabar*, I. L. R., 2 Mad. 295.

THE words in para. 1 of s. 53 of the Code of Civil Procedure (Act X. of 1877), "at or before the first hearing," are merely directory and not mandatory, and therefore a plaintiff may, subsequently to the "first hearing," amend his plaint, provided such amendment does not alter the original character of his suit. The plaintiffs (mortgagors) in a suit against their mortgagees sought only for production of the mortgage-deed or for an account, although the averments in the plaint warranted a prayer for redemption. Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption. *Held* that the provisions of s. 53 of the Civil Procedure Code (Act X. of 1877) did not preclude the Court from permitting the amendment to be made. It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it), or in the written statement, but which may appear upon the allegations made on oath by the parties or by any person present on their behalf, or made by the pleaders of such parties or persons. S. 34 of the Civil Procedure Code (Act X. of 1877) limits the time within which a defendant may object for want of parties, but it does not so limit the right of the plaintiff to add parties. In some cases s. 34 would not prevent even a defendant from objecting to the want of a party after the first hearing, e.g., where after the first hearing and before decree a co-parcener or remainderman or reversioner is born, or where a woman (who is a party) is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and therefore could not have been made or waived by the defendant; and if he made it at the earliest opportunity after it came into existence, he would have satisfied the spirit of s. 34.—*R. and N. Modhe (Plaintiff) v. S. Donger (Defendant)*, I. L. R., 5 Bom. 609.

A PLAINT alleged that the plaintiffs had the exclusive right to the Adhyapaka miras of reciting certain religious texts, hymns, or chants in a certain pagoda and its dependencies; that the defendants had no right to recite them; that the plaintiffs and the Brahmans of the plaintiffs' Tenkalai sect had for a long time discharged all the duties appertaining to the said right, and enjoyed the incomes of the Adhyapakan, except those mentioned in Schedules B and C; that the defendants, holding the office of Dharmakarta of the said pagoda, in combination with other persons in rivalry with the plaintiffs, recited the Vadakalai invocations, chants, and other religious prayers, the exclusive right to recite which was incident to the plaintiffs' Adhyapaka miras, the exclusive right of the plaintiffs being injured; that the defendants having withheld the payment of some of the incomes of the Adhyapaka miras in the said pagoda and in all the Sanwidhis attached to it, the plaintiffs instituted a suit against them in the District Munsif's Court, and in March, 1873, a decision was passed in favour of the plaintiffs; and that the defendants had withheld from the plaintiffs and others of the Tenkalai sect the amount of income mentioned in Schedule A for 6 years from the date of the said suit, as well as the honors mentioned in Schedule A from April, 1873. The plaint concluded with a prayer for a decree directing the defendants and others to abstain from reciting the said texts, hymns, or chants; for a declaration of the exclusive right of the plaintiffs; and for the recovery of the various items stated in the schedules. Schedule B referred to certain payments in kind. The High Court of Madras, under s. 32 of Act VIII. of 1859, rejected the plaint, on the ground that its subject-matter did not constitute a cause of action. *Held* that the plaint ought to have been admitted, since it disclosed a claim as of right to certain dues for services performed.—*Tiru Krishnama Chariar and others v. Krishna Swami Tala Chariar and others*, 3 Ind. Jur. 322.

When plaint shall be rejected.

54. The plaint shall be rejected in the following cases:— M.S.C.

(a) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(b) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so:

(c) if the suit appears from the statement in the plaint to be barred by any positive rule of law:

(d) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time.

AN APPEAL lies against an order rejecting a plaint on the ground of its being insufficiently stamped.—*Ajoodhya Pershad v. Gunga Pershad*, I. L. R., 6 Cal. 249.

THE law may lay down, for purposes of revenue, certain rules for the valuation of suits; but such valuation cannot be accepted as a criterion of the actual amount or value of the claim upon which the jurisdiction of a Court depends. The actual value of the estate to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff, is the value of the subject-matter.—*Bai Mahkar v. Bulakhi Chaku*, I. L. R., 1 Bom. 538.

THE assessment of the court-fee in a suit by a subordinate tenure-holder to recover possession of a definite portion of an entire estate paying a permanently settled annual revenue to Government should be made under the first part of subdivision a, cl. 5 of s. 7 of the Court Fees' Act. A plaint can only be rejected under s. 54 of Act X. of 1877 before it is registered.—*Hubibul Hossein and others (Defendants) v. Mahomed Reza and others (Plaintiffs)*, I. L. R., 8 Cal. 192.

WHERE, under Act VIII. of 1859, s. 336, a memorandum of appeal is returned for the purpose of being corrected, the Appellate Court should specify a time for such correction. Where an appellant presented an appeal within the period of limitation prescribed therefor, and the Appellate Court returned the memorandum

of appeal for correction, the appeal again presented some days after the period of limitation was held presented within time, the date of its presentation being the date it was presented.—*Jagan Nath v. Lalman*, I. L. R., 1 All. 260.

WHERE the Court of first instance, proceeding under section 10 of the Court Fees' Act, dismissed a suit after the first hearing, on non-payment of an additional fee required to be paid under that section, *held* that the Court had rightly dismissed the suit, under s. 10 of the Court Fees' Act. S. 54, Act X. of 1877, though a later enactment, was inapplicable, that section applying only to the initial stages of a suit before a plaint had been registered; whereas s. 10 of the Court Fees' Act was not susceptible of restriction to any particular stage of a suit.—*Valiya Kāsava Vadhyar and others v. Kanjeth Suppan Nair and others*, 4 Ind. Jur. 286; I. L. R., 2 Mad. 308.

M.S.C.C. 55. When a plaint is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order.

Procedure on rejecting plaint.

M.S.C.C. 56. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not, of its own force, preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

When rejection of plaint does not preclude presentation of fresh plaint.

M.S.C.C. 57. The plaint shall be returned to be presented to the proper Court in the following cases :—

When plaint shall be returned to be presented to proper Court.

(a) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law :

(b) if, in a suit relating to immoveable property, but not coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented :

(c) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling, or carrying on business, or personally working for gain, within such local limits.

On returning a plaint, the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

Procedure on returning plaint.

A MUNSIF, after hearing the evidence on both sides, found that the suit had been under-valued; but instead of returning the plaint under s. 57 of Act X. of 1877, he dismissed the suit. *Held* that the provisions of s. 57 were imperative, and might be put into force at any stage of the hearing; and that such dismissal of the suit was a matter which affected the merits of the case, and formed a proper subject for an appeal.—*Bhadeshwar Chowdhry and others v. Gauri Kant Nath*, I. L. R., 8 Cal. 834.

A SUIT to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court. After the suit had been admitted, and the parties called on to produce evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in suit being beyond the jurisdiction of a Munsif. *Held* that, under Act VIII of 1859, the Munsif's order was appealable to the lower Appellate Court, and under Act X. of 1877 the lower Appellate Court's order to the High Court.—*Kalian Das and others v. Nawal Singh and others*, I. L. R., 1 All. 620.

ALTHOUGH Act X. of 1877, s. 57, contemplates the return of the plaint should error be patent when it is first presented, yet there is nothing in the wording of that section which forbids the return of the plaint at a later stage in the suit. Where, therefore, after the issues in a suit were framed, the Court decided that it had no jurisdiction, and returned the plaint to be presented in the proper Court, *held* that, in so doing, the Court acted under s. 57; and its decision, not coming within the definition of a "decree" in Act XII. of 1879, s. 2, was not appealable as such, but was appealable under Act X. of 1877, s. 588, as an order.—*Abdul Samad v. Rajendra Kishor Singh*, I. L. R., 2 All. 357.

A DISTRICT Court transferred for trial a suit instituted in a Court subordinate to it to another Court subordinate to it. The Court in which the suit was instituted was not the one in which the suit should have been instituted, and consequently the Court to which it was transferred made an order dismissing it, and directing the return of the plaint for presentation to the proper Court. *Held* that such order must be taken to have been passed under s. 57 of the Civil Procedure Code, and was therefore appealable under s. 588 (6); and that the defect of jurisdiction arising out of the institution of the suit in the wrong Court was not cured by the transfer of the suit—*Pachaoni Awasthi v. Ilahi Bakhsh*, I. L. R., 5 All. 478.

THE plaintiff in this suit claimed in a Civil Court (i.) a declaration of his right to certain land; (ii.) that certain leases of such land, so far as their terms exceeded the term of settlement, should be cancelled; and (iii) arrears of rent for such land. The Court held as regards claim (i.) that the plaint did not disclose a cause of action, as it was not alleged that the defendant had disputed the plaintiff's right; as regards claim (ii.) that, with reference to the terms of s. 29 of Act XVIII. of 1873, the plaintiff's cause of action had not yet arisen; and as regards claim (iii.) that it was cognizable in a Court of Revenue; and it directed that under s. 57 of Act X. of 1877 the plaint should be returned to the plaintiff to be presented to the Revenue Court. *Held* that under the circumstances the plaint should have been rejected, and not returned.—*Nagar Mal (Plaintiff) v. Macpherson (Defendant)*, I. L. R., 3 All. 766.

The Court of first instance made an order returning the plaint in a suit to be presented to the proper Court, on the ground that it was not competent to try such suit. On appeal from such order the Appellate Court, holding that the Court of first instance was competent to try such suit, made an order "decreeing the appeal." It subsequently made an additional order directing that the case "should be returned for re-trial." On appeal to the High Court from such additional order, *held* that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which, under the last clause of s. 588 of Act X. of 1877, was final, and not an appeal from an order remanding a case under s. 562, the character of the original order of the Appellate Court not being altered by the passing of the additional order.—*Krishna Ram (Defendant) v. Narsingh Sevak Singh and others (Plaintiffs)*, I. L. R., 3 All. 855.

THE right to join in one suit two causes of action against a defendant cannot be exercised, unless the Court to which the plaint is presented has jurisdiction over both causes of action. The defendants, who resided and carried on business at Bombay, acted as the agents of the plaintiff for the sale, purchase, and despatch of goods to Tellicherry, where the plaintiff resided. The plaintiff sued the defendants for money due on account of the transactions in Tellicherry. *Held* that no cause of action arose in Tellicherry. To the claim arising out of the agency-transactions the plaintiff joined a claim on account of a partnership-transaction, which claim was triable by the Court of the District Munsif at Tellicherry. The Subordinate Judge held that he had no jurisdiction to try the claim arising out of the agency-transactions, found that nothing was due to the plaintiff on account of the partnership-transaction, and dismissed the suit. *Held* that the plaint ought to have been returned to the plaintiff with the proper endorsement as required by s. 57 of the Code of Civil Procedure, 1882—*Jivaraju v. Purushotam*, I. L. R., 7 Mad. 171.

AN ALLOTTEE, under a private partition, sued to stay subsequent partition-proceedings brought under Reg. XIX. of 1814, and to have his possession confirmed. The defendants objected to the valuation of the suit, and to the suit being heard by the Civil Courts, no proceedings having first been instituted before the Revenue

Authorities. *Held* that such a suit should be considered to be one for a declaratory decree, or for something in the nature of an injunction, and that, therefore, the plaintiff should not be stamped according to the value of the entire estate. That the question, whether the Collector would have brought the lands to partition, depended upon whether they were held "in common tenancy;" if they were not so held, the Collector would be only competent to make an assignment of the revenue in proportion to the several portions of the land held by the shareholders. That a private partition is no bar to proceedings in the Revenue Courts under s. 30 of Reg XIX. of 1814. A Munsif dismissed a suit, on the ground that, if it had been properly valued, it would not have come within his jurisdiction. The District Judge affirmed the Munsif's judgment, and directed the plaintiff to be returned for presentation to the proper Court under s. 57 of the Civil Procedure Code. This was not done. *Held* that a second appeal would lie. *Ajoodhia Lall v. Gurnani Lall* (2 C. L. R. 134) approved. *Ajoodhya Pershad v. Kristo Dyal* (15 W. R. 165) dissented from — *Joy-nath Roy (Plaintiff) v. Lall Bahadour Singh and others (Defendants)*, I. L. R., 8 Cal. 126.

M.S.C.C.

58. The plaintiff shall endorse on the plaint, or annex thereto, a

Procedure on admitting memorandum of the documents (if any) which
plaint. he has produced along with it; and, if the

plaint be admitted, shall present as many copies on plain paper of the
plaint as there are defendants, unless the Court, by reason of the length
of the plaint or the number of the defendants, or for any other sufficient

Concise statements.

reason, permits him to present a like number
of concise statements of the nature of the
claim made, or of the relief or remedy required, in the suit, in which
case he shall present such statements.

If the plaintiff sues, or the defendant or any of the defendants is
sued, in a representative capacity, such statements shall show in what
capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements
so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memo-
randum and copies or statements if, on examination, he finds them to
be correct.

The Court shall also cause the particulars mentioned in section 50

Register of suits.

to be entered in a book to be kept for the pur-
pose, and called the Register of Civil Suits.
Such entries shall be numbered in every year according to the order in
which the plaint is admitted.

M.S.C.C.

59. If a plaintiff sues upon a document in his possession or power,

Production of document
on which plaintiff sues.
Delivery of document or
copy.

he shall produce it in Court when the plaint is
presented, and shall, at the same time, deliver
the document, or a copy thereof, to be filed
with the plaint.

If he rely on any other documents (whether in his possession or
power or not) as evidence in support of his
claim, he shall enter such documents in a list
to be added or annexed to the plaint.

List of other documents.

IN COMPLIANCE with an application for the sale of land to satisfy a decree the
Civil Court put up certain land to auction in four lots. One lot was purchased by
the plaintiff for Rs. 88, and each of the other three were bought by him for less
than Rs. 100, the price for the whole amounting to Rs. 111-8-0, for which amount

the Court granted a single certificate of sale, dated 10th February, 1874. This certificate was never registered. The plaintiff applied to be put in possession; but, the defendant resisting him, his application was rejected. On the 16th of November, 1879, the plaintiff brought this suit to have his right declared to the piece bought for Rs. 88, and to recover its possession. Along with the plaint the plaintiff produced the unregistered certificate of sale of the 10th February, 1874. On the application of the plaintiff, another certificate for the same property was issued by the Court to the plaintiff on the 31st of October, 1877,—that is, three years after the confirmation of sale. This was registered on the 20th of December, 1877, and was produced by the plaintiff in the proceedings which gave rise to the present suit. It was obtained by the plaintiff on the 23rd of February, 1880, and tendered in evidence, but was rejected under s. 63 of the Code of Civil Procedure (Act XIV. of 1882). *Held* that although the four lots purchased by the plaintiff at the auction-sale were included in one certificate of sale, such certificate, although one instrument in form, should, for the purpose of registration, be regarded as four separate certificates of the four several lots. *Held* also that the registered certificate of sale, though issued three years after the confirmation of sale, was valid and admissible in evidence. *Vithal Janardan v. Vithojirav Putlajirav* (I. L. R., 6 Bom. 586) approved, and *In re Khajá Pathanji* (I. L. R., 5 Bom. 202) and *Tukarav v. Satvaji Khandoji* (I. L. R., 5 Bom. 206) dissented from. *Held* also that the refusal to admit in evidence the registered certificate of sale under s. 63 of the Code of Civil Procedure (Act XIV. of 1882) on the ground that it had not been produced with the plaint, as required by s. 59 of the Code, was improper, there having been no doubt of its existence at the date of suit.—*Devidás Jagjivan v. Pirjádá Begam*, I. L. R., 8 Bom. 377.

Statement in case of documents not in his possession or power.

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had, at the same time, delivered a copy of the instrument to be filed with the plaint.

Suits on lost negotiable instruments.

THE indorsees of a cheque sued the indorser, stating in their plaint that the cheque had been lost, and that the defendant refused to give them a duplicate of it, and claiming a duplicate of it or the refund of the money they had paid the defendant on the cheque. *Held* that the plaint disclosed a cause of action against the defendant. *Held* also that the plaint should be amended by joining the drawer of the cheque as a defendant in the suit.—*Baldeo Pershad and others (Plaintiffs) v. Grish Chunder Rose* (Defendant), I. L. R., 2 All. 754.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

Production of shop-book.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, and attesting the copy if found correct, shall return the book to the plaintiff, and cause the copy to be filed.

M.S.C.O. 63. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

CHAPTER VI.

OF THE ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

M.S.C.O. 64. When the plaint has been registered, and the copies of concise statements required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint, and admitted the plaintiff's claim.

M.S.C.C. Copy or statement annexed to summons.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58.

M.S.C.C. Court may order defendant or plaintiff to appear in person.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

M.S.C.C. No party to be ordered to appear in person unless resident

67. No party shall be ordered to appear in person unless he resides

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty, or, where within 50 or, where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the Court-house.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Summons to be either to settle issues or for final disposal.

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant, and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons.

72. The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates.

73. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

74. When there are more defendants than one, service of the summons shall be made on each defendant:

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made, unless the Court directs otherwise, either (a) on one defendant for himself and for the other defendants, or (b) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction of such business.

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

M.S.C.C. When service substituted, time for appearance to be fixed

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

WHERE substituted service of summons is ordered under Act X. of 1877, s. 82, a sufficient time ought, under s. 84, to be given for notice of the fact to reach the defendant wherever he may be; and if an *ex-parte* decree be obtained by the plaintiff, the Court, on being satisfied that the time fixed was insufficient, will set aside the decree.—*Mirza Ally Bebanee v. Syed Hyder Hoosein*, I. L. R., 2 Bom. 449.

M.S.C.C. 85. If the defendant resides within the jurisdiction of any Court

Service of summons when defendant resides within jurisdiction of another Court, and has no agent to accept service.

other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides; by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

M.S.C.C. 86. Whenever any process, issued by any Court established beyond

Service, within Presidency towns and Rangoon, of process issued by Provincial Courts.

the limits of the towns of Calcutta, Madras, Bombay, and Rangoon, is to be served within any such town, it shall be sent to the Court of Small Causes within whose jurisdiction the process is to be served;

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself,

and shall then return the process to the Court from which it issued.

M.S.C.C. 87. If the defendant be in jail, the summons shall be delivered to

Service on defendant in jail.

the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon, and signed by the officer in charge of the jail, and by the defendant.

M.S.C.C. 88. If the jail in which the defendant is confined is not in the

Procedure if jail be in different district.

district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India, and has no agent to accept service.

90. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent returns the summons with an endorsement under hereinafore directed, such endorsement shall be conclusive evidence of the service.

Service through British Resident or Agent of Government.

91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as the Court appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

Substitution of letter for summons.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

Mode of sending such letter.

Service of Process.

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Process to be served at expense of party issuing.

The Court-fee leviable for such service shall be levied within a time to be fixed by the Court before the process is issued.

Costs of service.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

Notices and orders in writing how served.

Postage.

95. Postage, where chargeable on any notice, summons, or letter issued under this Code, and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded :

Postage.

Provided that the Local Government, with the previous sanction of the Governor-General in Council, may remit such postage, or fee, or both, or may prescribe a scale of Court-fees to be levied in lieu thereof.

CHAPTER VII.

OF THE APPEARANCE OF THE PARTIES, AND CONSEQUENCE OF NON-APPEARANCE.

M.S.C.C. 96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

M.S.C.C. 97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed :

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing.

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

AN order under s. 97 of the Civil Procedure Code, dismissing a suit, on its being found that the summons has not been served on the defendant, in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, is not appealable.—*Lucky Churn Chowdhry v. Budurrunnissa*, I. L. R., 9 Cal. 627.

M.S.C.C. 98. If, on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

M.S.C.C. 99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the Court-fee required within the time allowed for the service of the summons, or for his non-appearance, as the case may be, the Court shall pass an order to set aside the dismissal, and appoint a day for proceeding with the suit.

WHERE the plaintiff in a suit failed to deposit the *talabana* required for the purpose of issuing summonses to certain persons whom it was proposed to make defendants in addition to the original defendants in such suit, and the Court on that ground irregularly dismissed such suit as against such original defendants by an order purporting to be made under s. 110 of Act VIII. of 1859 on a day previous to that fixed for the hearing of suit, held that such order of dismissal did not preclude the plaintiff from instituting a fresh suit.—*Gulab Dai (Plaintiff) v. Jewan Ram and others (Defendants)*, I. L. R., 2 All. 318.

99A. If, after a summons has, whether before or after the first day M.S.C.C. of June, 1882, been issued to the defendant,

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons, and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure if only plaintiff appears,

when summons duly served,

(b) if it is not proved that the summons was duly served, when summons not duly served,

(c) if it is proved that the summons was served on the defendant, when summons served, but not in due time. the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

THE plaintiff sued, under s. 3, clause *w*, of Act XVII. of 1877, for money due on a bond, dated the 8th September, 1877. The defendant, though duly summoned, did not appear on the day fixed in the summons, which was for the final disposal of the suit. The Court, therefore, proceeded with it *ex parte*. The defendant, being subsequently summoned and examined as a witness under s. 7 of the Act, admitted the bond sued upon, but pleaded part-payment of the plaintiff's claim. He then applied to the Court that his witnesses should be summoned, and that their evidence be taken in support of his allegation. The Subordinate Judge was of opinion that he (defendant) was not entitled to offer the evidence. On his referring the case to the High Court, *held* that it was his duty to summon the witnesses named by the defendant.—Duli Chand (Plaintiff) *v.* Dhondi (Defendant), I. L. R., 5 Bom. 184.

WHEN the plaintiff in a suit appears at the hearing, and the defendant does not appear, the proper procedure to follow is that prescribed by s. 100 of Act X. of 1877, whether the defendant has been summoned only to appear and answer the claim, or has in addition been summoned to attend and give evidence. It is not necessary, before proceeding to hear and determine a suit *ex parte* under s. 100, that all the process prescribed by law for compelling the attendance of the defendant as a witness should be exhausted. It is sufficient that due service of the summons upon the defendant is proved. If such proof is not given, the courses to be adopted are one or other of those mentioned in clauses *b* and *c* of s. 100 according to the circumstances of the case. The plaints and records in a number of suits upon bonds instituted by the same plaintiff against different persons were destroyed by fire. The suits were re-instituted, and duplicate copies of the plaints were filed. The only evidence of the contents of the bonds, from which the plaints were prepared, consisted of a register kept by the plaintiff's *gumáshtas* of the names of the

exécuteurs of the bonds, the matter in respect of which the bonds had been given, the amounts due thereunder, and the names of the attesting witnesses. From this register the duplicate plaints had been prepared. *Held* that though the register was not secondary evidence of the contents of the bonds, yet it was a document which might be referred to by a witness for the purpose of refreshing his memory under s. 159 of the Evidence Act.—Taruk Nath Mullick, Manager of the Cooch Behar Chaklajat Estate, on behalf of the Court of Wards (Plaintiff), *v.* Jeamat Nossya (Defendant), I. L. R., 5 Cal. 353.

- M.S.C.C. 101. If the Court has adjourned the hearing of the suit *ex parte* and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

DEFENDANTS who put in no appearance at the original hearing, and who have subsequently been refused leave to appear and defend, are at liberty, where an *ex parte* decree has been passed against them, to appeal to a higher Court, without previously taking any steps to have the *ex parte* decree set aside under s. 108 of Act X. of 1877.—Ashrufunnissa and another (Defendants) *v.* Lehareaux (Plaintiff), I. L. R., 8 Cal 2 2.

THE plaintiff sued, under s. 3, clause *w*, of Act XVII of 1877, for money due on a bond, dated the 8th September, 1877. The defendant, though duly summoned, did not appear on the day fixed in the summons, which was for the final disposal of the suit. The Court, therefore, proceeded with it *ex parte*. The defendant, being subsequently summoned and examined as a witness under s. 7 of the Act, admitted the bond sued upon, but pleaded part-payment of the plaintiff's claim. He then applied to the Court that his witnesses should be summoned, and that their evidence be taken in support of his allegation. The Subordinate Judge was of opinion that he (defendant) was not entitled to offer the evidence. On his referring the case to the High Court, *held* that it was his duty to summon the witnesses named by the defendant.—Duli Chand (Plaintiff) *v.* Dhondi (Defendant), I. L. R., 5 Bom. 184.

- M.S.C.C. 102. If the defendant appears, and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

IN A suit, issues having been settled, the final hearing of the suit was adjourned to a fixed date for final disposal. On that date plaintiff did not appear, and the suit was dismissed. *Held* that, as this was not a case which had been adjourned in favour of either party to enable him to "produce his proofs, or cause the attendance of his witnesses," the order was not one which could properly be made.—Ryall *v.* Sherman, I. L. R., 1 Mad. 287.

- M.S.C.C. 103. When a suit is wholly or partially dismissed under section 102, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

PER Garth, C.J.—The operation of s. 103 of the Code of Civil Procedure is confined to those cases only where a second suit is brought for the same object and cause of action as the suit which is dismissed.—Gobind Chunder Addya v. Afzul Rabbani, 1 L. R., 9 Cal. 426.

104. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit. **M.S.C.O.**

Procedure where defendant residing out of British India does not appear.

105. If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fits. **M.S.C.O.**

Procedure in case of non-attendance of one or more several plaintiffs.

106. If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear. **M.S.C.O.**

Procedure in case of non-attendance of one or more of several defendants.

107. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or shew sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

Consequence of non-attendance, without sufficient cause shewn, of party ordered to appear in person.

Of setting aside Decrees ex parte.

108. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into Court, or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit. **M.S.C.O.**

Setting aside decree *ex parte* against defendant.

UNDER s. 540 of the Civil Procedure Code an appeal lies from decrees passed *ex parte*. If a defendant appears at the first hearing, and files a written statement, he should not be placed *ex parte*—Anantharama Patter (Second Defendant), Appellant, v. Madhava Paniker (Plaintiff's Representative), Respondent, 1 L. R., 3 Mad. 264.

HELD by Stuart, C.J., and Straight and Tyrrell, JJ. (Oldfield and Brodhurst, JJ., dissenting), that a defendant against whom a decree has been passed *ex parte*, and who has not adopted the remedy provided by s. 108 of the Civil Procedure Code, cannot appeal from such decree under the general provisions of s. 540.—*Lal Singh and others v. Kunjan and others*, I. L. R., 4 All. 387.

THE only proper mode of dealing with cases, whether a regular suit or a miscellaneous proceeding, when the parties do not appear, is to dismiss it. A case so dismissed can be restored on application under s. 108, which is, by s. 647, applicable as well to execution-proceedings as to suits and appeals.—*Biswa Sonan Chunder Gossyamy v. Binanda Chunder Dibingar Adhikar Gossyamy*, I. L. R., 10 Cal. 417.

DEFENDANTS who put in no appearance at the original hearing, and who have subsequently been refused leave to appear and defend, are at liberty, where an *ex-parte* decree has been passed against them, to appeal to a higher Court, without previously taking any steps to have the *ex-parte* decree set aside under s. 108 of Act X. of 1877.—*Ashrufunissa and another (Defendants) v. Lehareaux (Plaintiff)*, I. L. R., 8 Cal. 272.

AN *ex-parte* decree was obtained against a defendant, who applied to have it set aside under s. 108 of the Civil Procedure Code. The application was made more than thirty days from the date of attaching the defendant's property in execution of the decree, but within thirty days of the service of the sale-proclamation. **HELD** that the application was barred by limitation under art. 164, sch. ii., Act XV. of 1877.—*In the matter of Bhaobunessury; Bhaobunessury v. Judobendra Narain Mullick*, I. L. R., 9 Cal. 869.

AN *ex-parte* decree having been granted in a suit against A personally and as guardian of her infant sons, the infants subsequently applied under s. 119 of Act VIII. of 1859 to set aside the decree, on the ground that the summons had not been duly served. It was proved that the summons had been duly served upon A, and the application was dismissed. On appeal to the High Court, **HELD** that, although so far as the decrees made A personally liable, the Court had no power to interfere, yet as the infants were not responsible for their non-appearance, it might be said that they had been prevented by "sufficient cause from appearing," and that the decrees might be set aside under s. 119 of Act VIII. of 1859 (or Act X., 1877, s. 108) as against them.—*Kesho Parshad and others (Judgment-debtors) (Appellants) v. Hirdaya Narain (Judgment-creditor) (Respondent)*, 6 Cal. Law Rep. 69.

M.S.

M.S.C.C. No decree to be set aside without notice to opposite party.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

CHAPTER VIII.

OF WRITTEN STATEMENTS AND SET-OFF.

M.S.C.C. **110.** The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements, and place them on the record.

THIS section contemplates that a defendant shall, in his written statement, set forth the case he intends to make at the trial.—*Chová Kára v. Isabin Khalifa*, I. L. R., 1 Bom. 209.

A **WRITTEN** statement of his case, tendered by a party to a suit at any time before or at the first hearing of the suit, is not liable to any court-fee, and may be written on plain paper (s. 110 of Act X. of 1877). A written statement called for by the Court after the first hearing is also exempt from stamp-duty (s. 19 of Act VII. of 1870).—*Nagu (Plaintiff) v. Yeknath (Defendant)*, I. L. R., 5 Bom. 400.

IN A suit for wrongful dismissal, in which the defendants pleaded justification by reason of the plaintiff's misconduct, *held* (1.) That the defendants at the hearing could not give evidence of a transaction involving instances of misconduct not set forth in their written statement. They should either have filed a supplemental written statement before the hearing, or have furnished the plaintiff with particulars of the misconduct in question, and intimated to him their intention of relying on the transaction as going to establish the general allegation of misconduct. (2.) That although the transaction in question could not be made the subject-matter of an auxiliary issue, and evidence of it, as such, could not be received, yet that questions relating to it might be put to the plaintiff in cross-examination for the purpose of affecting his credit. Supplemental written statements cannot be filed after the parties have entered upon their case at the hearing. Statements laid by clients before Counsel for the purpose of obtaining legal advice are privileged. A was employed by B, at intervals of a week or fortnight, to write up B's account-books, B furnishing him with the necessary information either orally or from loose memoranda. *Held* that the entries so made could not be given in evidence to contradict A, under s 145 of the Indian Evidence Act, as previous statements made by him in writing. The statements were really made, not by A, but by B, under whose instructions A had written them. *Held* also that it is only such books as are entered up as transactions take place that can be considered as books regularly kept in the course of business within s. 34 of the Indian Evidence Act.—*Munchershaw Bezonji (Plaintiff) v. The New Dhurumsey Spinning and Weaving Company (Defendants)*, I. L. R., 4 Bom. 576.

111. If in a suit for the recovery of money the defendant claims to **M.S.C.O.**

Particulars of set-off to be set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if, in such claim of the defendant against the plaintiff, both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards, unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Such set-off shall have the same effect as a plaint in a cross-suit, so as to enable the Court to pronounce a final

Effect of set-off. judgment in the same suit, both in the original and on the cross-claim; but it shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Illustrations.

(a.) A bequeaths Rs. 2,000 to B, and appoints C his executor and residuary legatee. B dies, and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D. Then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b.) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c.) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods, and is liable to him in compensation, which he claims to set-off. The amount, not being ascertained, cannot be set-off.

(d.) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims, being both definite pecuniary demands, may be set-off.

(e.) A sues B for compensation on account of a trespass. B holds a promissory note for Rs. 1,000 from A, and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands.

(f.) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(g.) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(h.) A owes the partnership-firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

THE usufructuary mortgagee of certain lands sued the mortgagor for the money due under the mortgage. The mortgagor alleged that the mortgagee had committed waste, and was liable to him for compensation, which he claimed to set-off. *Held* that, under Act X. of 1877, s. 111, the amount of such compensation could not be set-off.—*Raghu Nath Das v. Ashraf Hosain Khan*, I. L. R., 2 All. 252.

WHERE there is a debt due from an insolvent prior to his insolvency to another from whom there was a debt which was in dispute due to the insolvent, in a suit brought by the Official Assignee to recover the latter debt, the defendant is entitled, under s. 39 of the Insolvent Act, 11 and 12 Vic., cap. 21, to set-off the debt due from him to the insolvent, against sums which may be claimed from him.—*A. B. Miller (Plaintiff) v. A. Beer (Defendant)*, 6 Cal. Law Rep. 294.

THE heirs to M, deceased, appointed A, one of the heirs, manager of M's estate with a view to the payment of the debts due by the deceased. A creditor of the deceased sued his heirs to recover his debt, and obtained a decree, in execution of which the share of Z, one of the heirs in M's landed estate, was sold. The sale proceeds exceeded Z's share of such debt, and she sued the other heirs for contribution in respect of the difference. The defendants claimed a set-off in respect of Z's share of the liabilities of M's estate which had been satisfied by A as manager. *Held* that the set-off claimed could not be entertained in such suit.—*Abdul Hasan v. Zohra Jan*, I. L. R., 5 All. 299.

THE provisions of Act X. of 1877 do not give the right to set-off claims for unliquidated damages, but that Act does not take away any right of set-off, whether legal or equitable, which parties to a suit would have independently of its provisions. Where, in a suit for the price of goods sold and delivered, the defendant admitted that there was a sum of Rs. 1,159-12 due by him to the plaintiff, but sought to set-off the sum of Rs. 972 as damages sustained by him by reason of the non-delivery of some of the goods contracted for, *held* that as the claim of the defendant against the plaintiff was connected with the same transaction, and arose out of one and the same contract as that in respect of which the plaintiff's suit was brought, and as the amount of the defendant's claim was capable of being immediately ascertained, the defendant might set-off his claim.—*Kishorchand Champalal v. Madhewji Visram*, I. L. R., 4 Bom. 407.

M.S.C.C. No written statement to be received after first hearing.

Provided that the

Provisoos.

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit :

Provided that the Court may, at any time, require a written statement or additional written statement from any of the parties, and fix a time for presenting the same.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

Procedure when party fails to present written statement called for by Court.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

Frame of written statements.

Every such statement shall be divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation.

115. Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying complaints, and no written statement shall be received unless it be so signed and verified.

Written statements to be signed and verified.

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

Power of Court as to argumentative, prolix, or irrelevant written statements.

When any amendment is made under this section, the Judge shall attest it by his signature.

Attestation of amendments.

When a statement has been rejected under this section, the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

Effect of rejection.

CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT.

117. At the first hearing of the suit, the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the complaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not, expressly or by necessary implication, admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Ascertainment whether allegations in complaint and written statements admitted or denied.

M.S.C.O.

M.S.C.C. 118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put, in the course of such examination, questions suggested by either party.

Oral examination of party, or companion of himself or his pleader.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

Consequence of refusal or inability of pleader to answer.

If such party fails, without lawful excuse, to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

CHAPTER X.

OF DISCOVERY, AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING, AND RETURN OF DOCUMENTS.

M.S.C.C. 121 Any party may, at any time, by leave of the Court, deliver, through the Court, interrogatories in writing for the examination of the opposite party, or, where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer:

Power to deliver interrogatories.

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement, and such statement has been received and placed on the record.

S 121 of the Code of Civil Procedure contemplates (1) leave to interrogate, and (2) the service of the interrogatories through the Court. It is the duty of the Court under that section to determine whether the applicant should be allowed to interrogate the other side, but not to determine at that stage what question the party interrogated should be compelled to answer. Where an *ex-parte* order is made in chambers giving leave to interrogate, the party ordered to answer has a right to come into Court to have the order set aside if the case is one in which interrogatories should not have been allowed. When an order for the administration of interrogatories is properly made, a party objecting to the interrogatories administered may, at his peril, omit to answer the interrogatories to which he objects; but the more prudent course is to file his affidavit in answer, stating in it his objections to answer such questions as he objects to. Where interrogatories are scandalous, or in any way an abuse of the process of the Court, the Court may interfere at any stage. The power given to the Court by s. 36 should not be exercised except in extreme cases.—*Sham Kishore Mundle v. Shoshiboosun Biswas*, I. L. R., 5 Cal. 707.

122. Interrogatories delivered under section 121 shall be served on M.S.C.O.

Service of interroga- the pleader (if any) of the party interrogated,
 tories. or in the manner hereinbefore provided for the
 service of summons, and the provisions of sections 79, 80, 81, and 82,
 shall, in the latter case, apply, so far as may be practicable.

123. The Court, in adjusting the costs of the suit, shall, at the M.S.C.O.

Inquiry into propriety of instance of any party, inquire or cause inquiry
 exhibiting interrogatories. to be made into the propriety of delivering
 such interrogatories; and if it thinks that such interrogatories have
 been delivered unreasonably, vexatiously, or at improper length, the
 costs occasioned by the said interrogatories and the answers thereto
 shall be borne by the party in fault.

124. If any party to a suit be a body corporate or a joint-stock M.S.C.O.

Service of interrogatories company, whether incorporated or not, or any
 on officer of corporation or other body of persons empowered by law to sue
 company. or be sued, whether in its own name or in the
 name of any officer or other person, any opposite party may apply to
 the Court for an order allowing him to deliver interrogatories to any
 member or officer of such corporation, company, or body, and an order
 may be made accordingly.

125. Any party called upon to answer interrogatories, whether by M.S.C.O.

Power to refuse to an- himself or by any such member or officer, may
 swer interrogatories as irre- refuse to answer any interrogatory on the
 levant, &c. ground that it is irrelevant, or is not put *bond*
fide for the purposes of the suit, or that the matter inquired after is not
 sufficiently material at that stage of the suit, or on any other like
 ground.

126. Interrogatories shall be answered by affidavit to be filed in M.S.C.O.

Time for filing affidavit Court within ten days from the service thereof,
 in answer. or within such further time as the Judge may
 allow.

127. If any person interrogated omits or refuses to answer, or an- M.S.C.O.

Procedure where party swears insufficiently, any interrogatory, the party
 omits to answer sufficiently. interrogating may apply to the Court for an
 order requiring him to answer or to answer further, as the case may be.
 And an order may be made requiring him to answer or to answer fur-
 ther either by affidavit or by *viva voce* examination, as the Judge may
 direct: Provided that the Judge shall not require an answer to any
 interrogatory which in his opinion need not have been answered under
 section 125.

128. Either party may, by a notice through the Court, within a M.S.C.O.

Power to demand admis- reasonable time not less than ten days before
 sion of genuineness of docu- the hearing, require the other party to admit
 ments. (saving all just exceptions to the admissibility
 of such document in evidence) the genuineness of any document mate-
 rial to the suit.

The admission shall also be made in writing, signed by the other
 party or his pleader, and filed in Court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

M.S.C.O. 129. The Court may, at any time during the pendency therein of any suit, order any party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit, and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Every affidavit made under this section shall specify which (if any) of the documents therein mentioned the de-
 clarant objects to produce, together with the grounds of such objection.

M.S.C.C. 130. The Court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just.

UNDER s. 130 of the Civil Procedure Code (Act X. of 1877), a Judge has no discretion to refuse to allow inspection of documents relating to matters in question in a suit, provided they are not privileged. Confidential communications between principal and agent relating to matters in a suit are not privileged. *Held* in a suit for an injunction to restrain the defendant from using certain trade-marks, that telegrams and letters between the plaintiff's firm in London and their managing agent in Bombay, relating to the subject-matter of the suit, were not privileged.—*Bustros v. White* (L. R., 1 Q. B. D. 423) and *Anderson v. Bank of British Columbia* (L. R., 2 Ch. D. 644) followed.—*L. A. Wallace and others (Plaintiffs) v. F. G. Jefferson (Defendant)*, 1. L. R., 2 Boin. 453.

M.S.C.O. 131. Any party to a suit may, at any time before or at the hearing thereof, give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

M.S.C.O. 132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time, within three days from such delivery, at which the documents, or such of them as he does not object to produce, may be inspected at his

pleader's office or some other convenient place, and stating which (if any) of the documents he objects to produce, and on what grounds.

DEFENDANT was owner of certain cotton-ginning factories at and near A in the mufassal, and had also a place of business in Bombay. He entered into a contract in Bombay with the plaintiff to gin certain cotton of the plaintiff's at the said factories of the defendant in the mufassal. Plaintiff brought a suit for damages for the breach of this contract, and demanded inspection, in Bombay, of all the defendant's books relating to the business of the said ginning factories belonging to the defendant. The defendant was willing to give the inspection asked for, but contended that it should be had at A, where all the books in question were kept, and objected to bringing the books down to Bombay, as demanded by the plaintiff. *Held* that the contract, though made in Bombay, having been intended to be performed at a considerable distance from Bombay, at and near A, where the business of ginning was conducted, and where the books relating to the said business were kept, A was the proper place at which to give inspection.—*Kevaldas Sakarchand v. Pestonji Nasservanji and others*, I. L. R., 5 Bom. 467.

133. If any party served with notice under section 131 omits to M.S.C.O.

Application for order of give notice under section 132 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection.

BEFORE the Court will make an order under s. 133 of the Code of Civil Procedure, the preliminary steps mentioned in s. 131 must be taken by the party applying for the order.—*Mohendro Nauth Dawn v. Ishun Chunder Dawn*, I. L. R., 10 Cal. 56.

134. Except in the case of documents referred to in the plaint, M.S.C.O.

Application to be founded written statement, or affidavit of the party on affidavit. against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit, shewing (a) of what documents inspection is sought, (b) that the party applying is entitled to inspect them, and (c) that they are in the possession or power of the party against whom the application is made.

135. If the party from whom discovery of any kind or inspection M.S.C.O.

Power to order issue or is sought objects to the same or any part question on which right to thereof, and if the Court is satisfied that the discovery depends to be first right to such discovery or inspection depends determined. on the determination of any issue or question in dispute in the suit, or that, for any other reason, it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first, and reserve the question as to the discovery or inspection.

THE intention of s. 135 of the Civil Procedure Code (Act X. of 1877) is to give the Court the power of raising and determining an issue for the exclusive purpose of deciding the right to discovery of evidence which is to be used at the trial, and therefore, from the nature of the case, before the hearing of the cause. It should be a rule of practice that when an order is made under s. 135 of the Civil Procedure Code (Act X. of 1877) by the Judge in chambers, the suit should be set down for the trial of the particular issue as well as of the cause itself when it comes to a hearing before the same Judge.—*Ahmedbhoj Habibbhoj v. Vuleebhoj Cassumbhoj and others*, I. L. R., 6 Bom. 572.

IN A suit for specific performance of a contract to purchase an indigo-factory, the defendant denied that the agreement relied on was final, and alleged that the plaintiff had induced him to sign the agreement by means of representations regarding the nature, the extent, the value, and the net income of the property, all of which representations the defendant charged were false and fraudulent to the knowledge of the plaintiff. The plaintiff in his affidavit of documents set out a list of title-deeds evidencing his title to, and the books of accounts and other papers and documents relating to the property agreed to be purchased, and these he claimed to withhold from the defendant's inspection, on the ground that they were not sufficiently material at that stage of the suit. *Held* that the documents were not protected.—*Sutherland v. Singhee Churn Dutt*, I. L. R., 10 Cal. 808.

M.S.C.C.

136. If any party fails to comply with any order under this chapter, Consequences of failure to to answer interrogatories, or for discovery, production, or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not appeared and answered;

and the party interrogating, or seeking discovery, production, or inspection, may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any party failing to comply with any order under this chapter, to answer interrogatories, or for discovery, production, or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code.

THE powers given to the Court by Act X. of 1877. s. 136, should not be exercised except in extreme cases.—*Sham Kishore Mundle v. Shoshiboosun Biswas*, I. L. R., 5 Cal. 707.

WHERE a defendant neglects to comply with an order for production and inspection, the Court will, although in the last resort, order his defence to be struck out.—*Khajah Assenoolla Joo v. Khajah Abdool Aziz*, I. L. R., 9 Cal. 923.

THE High Courts in India possess the power of enforcing obedience to their orders by attachment for contempt. An order for attachment for contempt is not an order in exercise of the High Court's civil jurisdiction, and therefore does not come within the provision of s. 591 of the Civil Procedure Code. Contempts are in the nature of offences, and therefore, under s. 15 of the Letters Patent, 1865, an appeal lies from an order of committal for contempt. In dealing with an appeal from such an order, the Appellate Court will not go behind the order the disobedience to which constitutes the contempt.—*Navivahoo v. Narotamdás*, I. L. R., 7 Bom. 5.

UNDER the authority conferred by the Charters of the Supreme Courts, and continued by their own Letters Patent, the High Courts in India possess the power of enforcing obedience to their orders by committal for contempt. As regards the High Courts in India, the remedies provided by s. 136 of the Civil Procedure Code (Act X. of 1877) in cases of disobedience to an order of Court may be regarded as cumulative. They subject the offender to particular liabilities for his contumacy, but do not extinguish the Court's power of constraining him to obedience. An application may properly be made in Court to commit for contempt of an order made in chambers.—*Hassonbhoy v. Cowasji Jehángir*, I. L. R., 7 Bom. 1.

M.S.C.C.

137. The Court may of its own accord, and may in its discretion Court may send for papers from its own records or from other Courts. upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, shewing how the record is material to the suit in which the application is made, and that the applicant cannot, without unreasonable delay or expense, obtain a duly authenticated copy of the record, or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which, under the Indian Evidence Act, 1872, would be inadmissible in the suit.

WHERE a specific title has been alleged, but not proved, and the plaintiff endeavours to succeed in the first Court or second Court of Appeal upon title by twelve years' adverse possession, he must be prepared to show that this other title by twelve years' adverse possession was raised in the Court of first instance, with sufficient clearness to enable his adversary to understand that he claimed to succeed as well by twelve years' adverse possession as by the specific title alleged. In all cases in which parties apply for a summons to compel the attendance of witnesses, or a summons to produce documents, or apply to have a document sent for under s. 137 of the Code of Civil Procedure, the Court ought not to refuse such application, merely because in its opinion the witnesses cannot be present, or the documents cannot be produced, before the termination of the trial.—*Krishna Churn Baisack and another (Plaintiffs) v. Protap Chunder Surma, alias Rajendro Lal and others (Defendants)*, I. L. R., 7 Cal. 560.

138. The parties or their pleaders shall bring with them, and have **M.S.C.C.**

Documentary evidence to be in readiness at first hearing.

in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

139. No documentary evidence in the possession or power of any **M.S.C.C.**

Effect of non-production of documents.

party, which should have been, but has not been, produced in accordance with the requirements of section 138, shall be received at any subsequent stage of the proceedings, unless good cause be shown to the satisfaction of the Court for the non-production thereof. And the Judge receiving any such evidence shall record his reasons for so doing.

140. The Court shall receive the documents respectively produced **M.S.C.C.**

Documents to be received by Court.

by the parties at the first hearing, provided that the documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may, from time to time, direct.

The Court may, at any stage of the suit, reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

141. No document shall be placed on the record unless it has been **M.S.C.C.**

No documents to be placed on record unless proved. Proved documents to be marked and filed.

proved or admitted in accordance with the law of evidence for the time being in force. Every document so proved or admitted shall be endorsed with the number and title of the person producing it, and the date on which

it was produced. The Judge shall then endorse with his own hand a statement that it was proved against or admitted by (as the case may be) the person against whom it is used. The document shall then be filed as part of the record :

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the Court shall mark the entry, and shall then return the book to the person producing it.

All documents produced at the first hearing, and not so proved or admitted, shall be returned to the parties respectively producing them.

M.S.C.C. 142. When a document so proved or admitted is relied on as evidence by either party, but the Court considers it inadmissible, it shall be further endorsed with the addition of the word "rejected," and the endorsement shall be signed by the Judge.

The document shall then be returned to the party who produced it.

M.S.C.C. 143. Notwithstanding anything contained in sections 62, 141, and 142, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

M.S.C.C. 144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same :

Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original :

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

M.S.C.C. 145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

CHAPTER XI.

OF THE SETTLEMENT OF ISSUES.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

• Framing of issues.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds: (a) issues of fact, (b) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements (if any), and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

Allegations from which issues may be framed.

147. The Court may frame the issue from all or any of the following materials—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons;

(b) allegations made in the plaint or in the written statements (if any) tendered in the suit, or in answer to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

148. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

Court may examine witnesses or documents before framing issues.

149. The Court may, at any time before passing a decree, amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

A JUDGE is not bound to make any amendment in the issues of a case, except for the purpose of more effectually putting in issue and trying the real question or questions in controversy as disclosed by the pleadings on either side. *Bizjie Bebee v. Manohar Doss* (2 Ind. Jur., N. S., 118), *Wilkin v. Reed* (15 C. B. 192), *Lucas v. Tarleton* (3 H. and N. 116), followed. Where no injustice would be done to either party, the Courts, in the exercise of their discretion, under special circumstances, may allow issues to be raised upon matter which does not strictly come within the proper scope of the pleadings. The power to allow such amendments is given by the first part of s. 149 of Act X. of 1877, corresponding with the first part of s. 141 of Act VIII. of 1859.—*Nehora Roy and others (Plaintiffs) v. Radha Parshad Singh (Defendant)*, I. L. R., 5 Cal. 64.

150. When the parties to a suit are agreed as to the question of Questions of fact or law fact or of law to be decided between them, may by agreement be stated they may state the same in the form of an in form of issue. issue, and enter into an agreement in writing—

(a) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(b) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(c) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

151. If the Court be satisfied, after making such inquiry as it deems proper,

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court ;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement ;

and upon the judgment so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER XII.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

152. If, at the first hearing of a suit, it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues;

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issue only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present, and none of them object.

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

155. If the summons has been issued for the final disposal of the M.S.C.C. suit, and either party fails, without sufficient (first para.), cause, to produce the evidence on which he relies, the Court may at once pronounce judgment,

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

CHAPTER XIII.

OF ADJOURNMENTS.

156. The Court may, if sufficient cause be shown, at any stage of M.S.C.C. the suit, grant time to the parties or to any of them, and may, from time to time, adjourn the hearing of the suit.

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Costs of adjournment.
Provided that, when the hearing of evidence has once begun, the bearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand,

A COURT ought not to adjourn a case for the production of a document, much less (when it does so) to allow witnesses and several of the parties who were interested in the result to be recalled, and to add to and vary the evidence which they had previously given, in order to prove a case which they had not set up.—(P. C.) 3 P. C. R. 304 (26 W. R. 55; L. R. 3 I. A. 259).

M.S.C.C. 157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII., or make such other order as it thinks fit.

M.S.C.C. 158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

WHERE a suit was adjourned on the application of the defendant, and on the day to which the case was adjourned the plaintiff was absent, and the suit was dismissed for default by an order purporting to be passed under s. 158 of the Code of Civil Procedure, 1882, *held* that s. 158 was not applicable to the circumstances, and that the plaintiff was entitled to apply under s. 103 to have the dismissal set aside.—*Rāmaya v. Rangaya*, I. L. R., 7 Mad. 41.

THE Code of Civil Procedure does not authorize the dismissal of a suit on refusal or failure of a party to deposit the amount ordered by the Court as remuneration to a Commissioner appointed under s. 394 to examine accounts. The remuneration of a Commissioner appointed by the Court to examine accounts should, as a rule, be a definite amount, and not at a monthly allowance.—*Rāgava Chariār* (Plaintiff), Appellant, *v. Vēdānta Chariār* and others (Defendants), Respondents, I. L. R., 3 Mad. 259.

CHAPTER XIV.

OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

M.S.C.C. 159. The parties may, after the summons has been delivered for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents.

THE 20th of March, 1877, having been fixed for the final hearing of a suit, the plaintiff on the 17th of March, and defendant on the 19th, filed their lists of witnesses to be summoned. Both lists were ordered merely to be put up with the record. When the suit came on for hearing, it was dismissed on the ground that, when the plaintiff filed his list, there was not sufficient time left to summon the witnesses. *Held* that the Judge was not justified in dismissing the suit on this ground, unless he found that it would have been absolutely impossible to secure the attendance of the witnesses, had the summonses been granted on the 17th instant. S. 149 of Act VIII. of 1859, and s. 159 of Act X. of 1877, discussed.—*Rajendro Narain Neogi* and another (Plaintiffs) *v. Raja Kumud Narain Bhup* (Defendant), 3 Cal. Law Rep. 569.

160. The party applying for a summons shall, before the summons is granted, and within a period to be fixed by the Court, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the Court in which he is required to attend, and for one day's attendance.

Expenses of witnesses to be paid into Court on applying for summons. If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

161. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

165. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

M.S.C.O. 166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant ; and the rules contained in Chapter VI, as to proof of service shall apply in the case of all summonses served under this section.

M.S.C.O. 167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

M.S.C.O. 168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall examine the serving-officer on oath touching the non-service ;

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein ; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may, in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170 :

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

M.S.C.O. 169. If, on the attachment of his property, such person appears, and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

M.S.C.O. 170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out to appear, of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine, not exceeding five hundred rupees, as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the

purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine (if any):

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

171. Subject to the rules of this Code as to attendance and appearance, and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness, or require him to produce such document. **M.S.C.C.**

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place. **M.S.C.C.**

173. No person so summoned and attending shall depart unless and until (a) he has been examined or has produced the document and the Court has risen, or (b) he has obtained the Court's leave to depart. **M.S.C.C.**

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court: **M.S.C.C.**

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

Explanation.—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169, and 170, shall, *mutatis mutandis*, apply. **M.S.C.C.**

M.S.C.C. Persons bound to attend in person.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

(a) within the local limits of its ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distant from the Court-house.

M.S.C.C. **177.** If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give consequence of refusal of party to give evidence when called on by Court. evidence or to produce any document then and there in his actual possession or power, the Court may, in its discretion, either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

M.S.C.C. **178.** Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

CHAPTER XV.

OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

M.S.C.C. **179.** On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Explanation.—The plaintiff has the right to begin, unless where the defendant admits the facts alleged by the plaintiff, and contends that, either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

IN A suit for partition of certain property and trading business, the defendants resisted the suit, admitted a nucleus of joint property, and claimed the right to begin on the ground that the *onus* was on them to prove that the whole property and the trading business were not joint. *Held* that, unless the defendants admitted all the allegations, or all the material allegations, the plaintiff was entitled to begin. —*Aghore Nath Neogy (Plaintiff) v. Premchund Neogy and others (Defendants)*, 7 Cal. Law Rep. 274.

IT CANNOT be laid down as a general proposition controlling the provisions of s. 179 of the Code of Civil Procedure, that in a suit for mesne-profits against persons who have been in possession of the land in respect of which the mesne-profits are claimed, and who have been shown to have no title, that the burden of proof is upon the defendants. In a suit for mesne-profits against a number of defendants who have been in possession of distinct portions of a newly-formed ~~chor~~, and are proved to have no title thereto, it is competent, having regard to the provisions of the Civil Procedure Code, to the Court to apportion the damages payable by the defendants severally in respect of the portions held by them respectively. *After*, where the defendants have jointly taken possession of a

particular portion of such land. *Per Curiam*.—The reason for treating as joint tort-feasors all persons who have occupied portions of land ultimately found to belong to a neighbouring estate, and for applying the rule of contribution or apportionment between joint tort-feasors, is wanting in the case of a suit for mesne-profits against a number of defendants who have taken possession of distinct portions of lands forming part of a newly-formed chur to which they have no title, and it is fair and equitable that the defendants should be severally made liable for mesne-profits in respect of the parcels occupied by them respectively—*Krishna Mohan Basak and others (Plaintiffs), (Appellants), v. Kunjo Behari Basak and others (Defendants), (Respondents)*, 9 Cal. Law Rep. 1.

Statement and production of evidence by other party.

Reply by party beginning.

180. The other party shall then state his case and produce his evidence (if any).

The party beginning is then entitled to reply.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues, or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

181. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence, and under the personal direction and superintendence, of the Judge.

182. In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same, and shall sign it.

FAILURE to comply with the provisions of ss. 182 and 183 of Act X. of 1877 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under s. 91 of Act I. of 1872 (Indian Evidence Act), no other evidence of such deposition is admissible.—In the matter of the *Petition of Mayadeb Gossami: Empress v. Mayadeb Gossami*, I. L. R., 6 Cal. 762.

183. If the evidence is taken down under section 182 in a language different from that in which it was interpreted, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

184. In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each

Memorandum when evidence not taken down by Judge.

witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

185. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down with his own hand.

186. The Court may, of its own motion, or on the application of any party or his pleader, take down, or cause to be taken down, any particular question and answer or any objection to any question, if there appear any special reason for so doing.

187. If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection, and the name of the person making it, together with the decision of the Court thereon.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

M.S.C.C. 189. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

M.S.C.C. 190. If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Every memorandum so made shall form part of the record.

M.S.C.C. 191. Where the Judge taking down any evidence, or causing any memorandum to be made under this chapter, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum as if he himself had taken it down or caused it to be made.

M.S.C.C. 192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

193. The Court may, at any stage of the suit, recall any witness **M.S.C.C.** who has been examined, and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

CHAPTER XVI.

OF AFFIDAVITS.

194 Any Court of first instance and any Appellate Court may, at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :

Provided that where it appears to the Court that either party *bond fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

195. Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance of the declarant, for cross-examination, of the declarant.

Such attendance shall be in Court, unless the declarant is exempted under this Code from personal appearance in Court, or the Court otherwise directs.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on matters to which affidavits shall be confined, interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

Oath of declarant by whom to be administered. 197. In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or
- (b) any officer whom a High Court may appoint in this behalf, or
- (c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf, may administer the oath of the declarant.

CHAPTER XVII.

OF JUDGMENT AND DECREE.

M.S.C.C. 198. The Court, after the evidence has been duly taken, and the Judgment when pro- parties have been heard either in person or by nounced. their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

M.S.C.C. Power to pronounce judgment written by Judge's predecessor.

199 A Judge may pronounce a judgment written by his predecessor, but not pronounced.

M.S.C.C. Language of judgment.

200. The judgment shall be written in the language of the Court, or in English, or in the Judge's mother-tongue.

M.S.C.C. 201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if Translation of judgment. any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

M.S.C.C. 202. The judgment shall be dated and signed by the Judge in Judgment to be dated open Court at the time of pronouncing it, and and signed. shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

M.S.C.C. 203. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

M.S.C.C. 204. In suits in which issues have been framed, the Court shall Court to state its decision state its finding or decision, with the reasons thereof upon each separate issue, unless the Exception. finding upon any one or more of the issues be sufficient for the decision of the suit.

IN A suit for ejectment by a landlord against his tenant the following amongst other issues were raised, *viz.*, whether the notice alleged was sufficient, and whether the defendant was entitled to a right of occupancy. The Court of first instance dismissed the suit, finding upon the admitted facts that the notice alleged was insufficient, but also decided the other issues raised, and held that the defendant was not entitled to a right of occupancy. *Held* that the finding upon the question of notice based upon the admitted facts being sufficient to dispose of the whole case, the Court erred in proceeding to determine any other issues raised in the suit.—*Barhamdeo Narain Sing v. Mackenzie*, I. L. R., 10 Cal. 1095.

IN ORDER to see whether a question is *res judicata* within the meaning of s. 13, Civil Procedure Code, the former decree and the questions decided thereby must alone be considered. The words in s. 13, "has been heard and finally decided by such Court," do not apply to an opinion expressed in the judgment on other issues not material for the purpose of the decree, though properly determined under s. 204.

by the Court of first instance *Niamut Khan v. Phadu Buldia* (I. L. R., 6 Cal. 319) and *Lachman Singh v. Mohan* (I. L. R., 2 All. 497) dissented from. Where a plaintiff improperly brings a defendant before a Court, and the suit is dismissed, the defendant should not be deprived of costs merely because the Court considers the defence a fabrication to meet the plaintiff's claim.—*Devarakonda Narasana* (First Defendant), Appellant, and *Devarakonda Kanaya* (Plaintiff), Respondent, I. L. R., 4 Mad. 134

205. The decree shall bear date the day on which the judgment **M.S.C.C.**

Date of decree. was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

206. The decree must agree with the judgment: it shall contain **M.S.C.C.**

Contents of decree. the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid.

If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion, or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment, or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

Power to amend decree. AN APPLICATION to amend a decree which is found to be at variance with the judgment, in accordance with the provisions of s. 206 of the Civil Procedure Code, is an application of the kind mentioned in art. 178 of sch. ii. of Act XV. of 1877, and, as such, subject to the limitation of three years.—In the matter of the Petition of *Gaya Prasad v. Sikri Prasad*, I. L. R., 4 All. 23.

THE plaintiff sued on a bond in which real property was hypothecated. In his claim the property hypothecated was detailed, and the property itself was impleaded as a defendant, and he obtained a decree in the following terms: "Decree for plaintiff in favour of his claim, and costs against defendant." Held that the decree was to be regarded as simply for money, and not for enforcement of lien.—*Thamman Singh* (Plaintiff) *v. Ganga Ram* and others (Defendants), I. L. R., 2 All. 342.

WHERE the plaintiff by his claim sought for a decree for money and enforcement of lien on the property hypothecated in the bond on which the claim was based, and he obtained a decree for the "claim as brought," without any specification in it as to the relief he sought by charging the property hypothecated, held that such a decree was a decree for money only, and did not enforce the charge on the property. *Muluk Fuqueer Bakhsh v. Manohar Dass* (H. C. R., N. W. P., 1870, p. 29) followed.—*Harsukh* (Plaintiff) *v. Maghraj* (Defendant), I. L. R., 2 All. 345.

THE plaintiff in a suit claimed possession of villages said in the plaint to be "detailed below." No details of the villages were given in the plaint itself, but a separate paper containing a list of villages was filed with the plaint. The plaintiff obtained a decree for possession of "all the villages claimed," but there was no indication in the decree what those villages were. Held that the Court executing the decree was not justified in reading the contents of the list of villages attached to the plaint into the decree, and awarding the decree-holder possession of the villages named in such list. *S. A. No 310 of 1882*, decided the 11th August, 1882, followed. *Debi Charan v. Pirbhu Din Ram* (I. L. R., 3 All 388) referred to.—*Muhammad Sulaiman v. Muhammad Yar*, I. L. R., 6 All. 30.

ANY order made upon an application for a review of judgment, except an order absolutely rejecting the application, becomes, if it in any way modifies or alters the original order, although the modification or alteration extends only to the rectification of a clerical mistake, the final order in the case ; and the party aggrieved by the original decree is entitled, although the modification or alteration was made in his favour, to treat the order upon review of judgment as the final decree or order in the case ; and if it was made by a Court, an appeal from which lies in the Court of a District Judge, he is entitled to prefer his appeal at any time within thirty days from its date. When an application for a review of judgment is made upon several grounds, one of which refers only to the question of adjudication of costs, and the Court to whom the application is made holds all the other grounds to be untenable, but is of opinion that there has been a clerical mistake in that part of its order or judgment which refers to costs, it may reject the application absolutely, and permit the applicant to apply, under s. 206 of the Civil Procedure Code, for a rectification of the clerical mistake ; but if it does not do so, but, on the application for a review of judgment, amends the clerical mistake in its original order, the decree drawn up in conformity to this order becomes the final decree, and an appeal will lie against it if brought within the time prescribed for bringing an appeal against any other similar decree.—*Joykishen Mookerjee v. Attoor Roboman*, I. L. R., 6 Cal. 22.

207. When the subject-matter of the suit is immoveable property,

Decree for recovery of and such property is identified by boundaries immoveable property. or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

M.S.C.O.

208. When the suit is for moveable property, if the decree be for

Decree for delivery of the delivery of such property, it shall also state moveable property. the amount of money to be paid as an alternative if delivery cannot be had.

M.S.C.O.

209. When the suit is for a sum of money due to the plaintiff, the

In suits for money, decree Court may, in the decree, order interest at such may order certain interest rate as the Court deems reasonable to be paid to be paid on principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

THE contract rate of interest must be allowed up to the date of decree in accordance with Act XXVIII. of 1855, s. 2. The Civil Procedure Code, s. 209, does not expressly refer to suits in which interest has been contracted for, and does not repeal the former Act.—*Bandaru Sivami Naidu* and another (Plaintiffs), Appellants, v. *Atchayamma* and another (Defendants), Respondents, I. L. R., 3 Mad. 125.

A DECREE for money directed that its amount should be payable "according to the terms of the judgment-debtor's written statement." In his written statement the judgment-debtor had promised to pay interest on the judgment-debt if the same were not discharged by a certain day. *Held*, having regard to the decision of the Full Bench in *Debi Charan v. Pirbhu Din* (I. L. R., 3 All. 388), that the judgment-debtor having failed to discharge the judgment-debt by such day, he was bound by the terms of the decree to pay interest on its amount.—*Ram Nandan Rai* (Judgment-debtor) v. *Lal Dhar Rai* (Decree-holder), I. L. R., 3 All. 775.

A DECREE directed accounts to be taken of what was due for principal and interest under a mortgage, such interest to be allowed "up to the time of payment hereinafter mentioned or until six months from the date of the decree, whichever first should happen ; and further directed the plaintiff to pay what should be reported due for principal and interest up to the date of payment, and costs,

with interest at 6 per cent. from the date of taxation until payment, within six months after the Registrar should make his report. The plaintiff tendered a sum sufficient to cover the principal and interest due, but insufficient to cover costs, at a time prior to the drawing up of the Registrar's report. *Held* that the payment of principal and interest "hereinafter mentioned" referred to a time after the Registrar had made his report, because the sum to be paid was a sum reported to be due by the Registrar, and that, therefore, a tender made before the Registrar's report was given was not a sufficient tender to stop interest from the date of the tender.—*Administrator-General of Bengal v. Mirza Ahmed Begg*, 1. L. R., 9 Cal. 33.

A DECREE, of which the terms had been arranged by a *solehnâma* between the parties, for payment of money by instalments, with interest at six per cent., was construed to provide also for three contingencies, *viz.*, non-payment at due date (a) of the first instalment, two consecutive instalments being in arrear at the same time; (b) of instalments other than the first; (c) of the first instalment simply. Upon the occurrence of (a), or of (b), execution might issue for the whole decretal money with interest thereon at twelve per cent. Upon the occurrence of (c) execution might issue for that instalment, with interest at twelve per cent. from the date of the decree. The decree-holder having accepted payment of the first instalment on the footing of (c), *held* that he had not, by any admission or settlement, precluded himself from insisting on the above construction as to (b). *Held* also that these provisions for double interest were but a reasonable substitution of a higher rate of interest for a lower in a given state of circumstances, and were not in the nature of a penalty against which equitable relief might be claimed.—*Balkishen Das v. Run Bahadur Singh*, 1. L. R., 10 Cal. 305.

210. In all decrees for the payment of money, the Court may, for M.S.C.O.

Decree may direct pay- any sufficient reason, order that the amount
ment by instalments. shall be paid by instalments, with or without
interest.

And, after the passing of any such decree, the Court may, on the

Order, after decree, for application of the judgment-debtor, and with
payment by instalments. the consent of the decree-holder, order that the
amount decreed be paid by instalments on such terms as to the payment
of interest, the attachment of the property of the defendant, or the
taking of security from him, or otherwise, as it thinks fit.

Save as provided in this section and section 206, no decree shall
be altered at the request of parties.

ACT X. of 1877, s. 210, is not applicable in a suit for the recovery of the amount
of a bond-debt by the sale of the property hypothecated by such bond. In such a
suit, therefore, the Court cannot direct that the amount of the decree shall be pay-
able by instalments.—*Harleo Das v. Hukun Singh*, 1. L. R., 2 All 320.

THERE is nothing in Act X. of 1877, s. 210, or elsewhere in that Act, authoriz-
ing a Court to direct that the amount of a decree should be paid within a fixed
time from its date. *Semble*.—That s. 210 is not applicable in a suit for the recovery
of the amount of a bond-debt by the sale of the *nankar* allowance hypothecated
by such bond.—*Bachhu v. Madad Ali*, 1. L. R., 2 All. 649.

ON THE 26th of June, 1878 a judgment-debtor applied under s. 210 of the Code
of Civil Procedure for two years' time to pay the amount of the decree which was
dated 12th March 1878. Notice having been given to the judgment-creditor, an
ex-parte order was made allowing the judgment-debtor two years' time to pay, but
the decree itself was not altered in accordance with this order. On the 9th of July,
1882, the decree-holder applied for execution of the decree. *Held* that the applica-
tion was not barred by limitation.—*Tata v. Rámachandra*, 1. L. R., 7 Mad. 152.

THE word "debt" in ss. 20 and 21 applies only to a liability for which a suit
may be brought, and does not include a liability for which judgment has been
obtained. Therefore, where the last application for execution of a decree had been
made on the 14th December, 1872, and a notice under Act VIII. of 1859, s. 216,

issued on the 19th January, 1873, and on the 28th April, 1873, the judgment-debtor filed a petition notifying part-payment, which petition was signed by the judgment-creditor, *held*, in an application for execution made on the 27th April, 1876, that further execution was barred by limitation (Act IX. of 1871).—*Kally Prosonno Hazra v. Heera Lall Mundle*, I. L. R., 2 Cal. 468.

THE parties to a decree for money, dated the 14th July, 1871, entered into a compromise, whereby, in lieu of a portion of the decretal money, the decree-holder was placed in possession of certain property, and the remainder of the decretal money was to be paid by fixed annual instalments, and, in case of default in the payment of any instalment, it was agreed that the entire amount should become immediately realizable by execution of the decree. On the 11th December, 1882, the decree-holder, alleging default in payment of the instalments, applied for execution of the compromise. *Held* that such an agreement could not be treated as an instalment-decree, and, as such, capable of execution. *Debi Rai v. Gokal Prasad* (I. L. R., 5 All. 585) followed.—*Ramlakhan Rai v. Bakhtaur Rai*, I. L. R., 6 All. 623.

Quære.—Whether “a decree for the payment of money” means merely what is commonly known as a money-decree, or includes a decree in which a sale is ordered of immoveable property in pursuance of a contract specifically affecting such property, within the meaning of s. 194 of Act VIII. of 1859 and s. 210 of Act X. of 1877. Where a Court, on the ground that the defendant was “hard pressed,” directed the amount of a decree to be paid by instalments extending over ten years, and allowed only one-half of the usual rate of interest, “*held* that there was no sufficient reason for directing payment of the amount of the decree by instalments, and that such Court had exercised its discretion injuriously to the plaintiff, by the length of the period over which the instalments were extended, and by allowing a rate of interest less than the ordinary rate.—*Binda Prasad (Plaintiff) v. Madho Prasad and others (Defendants)*, I. L. R., 2 All. 129.

IN exercise of the discretion given by s. 194 of the Code of Civil Procedure (Act VIII. of 1859), the Court of first instance gave a decree to the plaintiff making the amount awarded payable by instalments, but gave no interest after the institution of the suit. The Appellate Court amended the decree by awarding the interest from the institution of the suit at six per cent. per annum, the rate originally contracted for being twenty-four per cent. per annum. *Held*, although the stipulated rate was properly awardable, the award of the lower rate was not illegal or beyond the competency of the Court below, with whose discretion the High Court will not interfere. A mortgagee is, as a general rule, entitled to the costs of enforcing his security; but where the Court, in consideration of his usurious bargain, declines to award them wholly or in part, the High Court will not interfere.—*J. Corvalho (Original Plaintiff), Appellant, v. Nur Bibi and others (Original Defendants)*, Respondents, I. L. R., 3 Bom. 202.

WHERE a decree was passed by consent in 1872 for payment to plaintiff through the Court of Rs. 300 by fifteen annual instalments on the 20th February in each year, and in default of payment of any instalment the whole amount became recoverable, and four years’ instalments were paid out of Court, and default made on the 20th February, 1877, and plaintiff applied to recover the instalment of 1877 by execution on the 17th November, 1879, and the 1st March, 1880, *held* that the application of November, 1879, was not barred under cl. 6, art. 179, sch. ii. of the Limitation Act of 1877, inasmuch as, when the Indian Limitation Act, 1877, came into force (1st October, 1877), the application was not barred under cl. 6, art. 167, sch. ii. of the Indian Limitation Act, 1871. *Held* also that the provision as to the whole amount becoming recoverable at once if default was made did not affect the admissibility of the application for execution, because that provision had not been enforced, and the obligation to pay by instalments was still subsisting.—*Karakavasa Appayya (Defendant), Appellant, v. Kāranam Papayya (Plaintiff), Respondent*, I. L. R., 3 Mad. 256.

A COLLECTOR, to whom a decree for sale of mortgaged property has been transferred for execution under s. 320 of the Civil Procedure Code, is limited to one of the three courses specified in s. 321, and may not depart from them; much less may he do what the Court itself could not do in such a case—allow payment

of the debt to be made by instalments. A Collector, to whom a decree has been so transferred for execution, acts ministerially, and, when he delegates his functions to an assistant or a *mámlatdár*, incurs a risk of having to answer in damages to the person who is by any error or mistake deprived of the fruits of his judgment; and this risk attaches independently of malice or negligence. The Court that has made a decree or judicial order, which has been transmitted to the Collector for execution, is not deprived of the judicial powers with respect to it, which may still at any particular time be competent to such Court, and which it would have had had the order been placed in the hands of its own ordinary officer, the *názir*. In the exercise of such powers the Court has authority to recall its own record transmitted to the Collector.—*Mahádáji Karandikar v. Hari D. Chikne*, I. L. R., 7 Bom. 332.

THE words "decree passed against an agriculturist" in s. 20 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) mean a decree passed against an agriculturist personally, and do not include decree for the recovery of money by the sale of mortgaged property. The effect of that section must be taken to be an enlargement of the indulgence granted by s. 210 of the Civil Procedure Code (Act X. of 1877), but only in those cases to which the latter section applies. By s. 210 of the Civil Procedure Code, the Court may, after the passing of a decree in money-suits, order the amount to be paid by instalments, provided the decree-holder consents. By s. 20 of Act XVII. of 1879 the Court may make the same order in similar suits, without the consent of the decree-holder. In the case of a debt secured by a mortgage, the agriculturist's remedy lies in a suit, not for an account, but for redemption; and the only decree which can be made in such a suit, in the absence of any special provision in the Act, is the ordinary decree for payment of the whole amount within six months, or, in default, for foreclosure. *Hardeo Das v. Hukam Singh* (I. L. R., 2 All. 320) referred to and approved.—*Shankarāpa Dargo Patel* (Original Plaintiff), Appellant, *v. Dánāpa Virantāpa* (Original Defendant), Respondent, I. L. R., 5 Bom. 604.

A JUDGMENT-DEBTOR, whose property was about to be sold, appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond, in which such surety promised to pay the amount of the decree within one year, if the judgment-debtor did not do so. Such officer thereupon applied to the District Judge to postpone the sale, stating that such surety was willing to pay the amount of the decree by instalments within one year, and forwarding such bond. The District Judge ordered the sale to be postponed, and the papers to be sent to the Munsif who had made the decree and ordered the sale of the property. The Munsif made no order regarding the security, but merely made an order that the amount of the decree should be paid by instalments within one year. The judgment-debtor did not pay the amount of the decree within the time fixed, and the decree-holder therefore applied for execution of the decree against such surety. *Held* that, inasmuch as the decree-holder had not been a party to the proceedings of the sale-officer or of the District Judge, and as the parties had not appeared before the Munsif, and as such surety had not agreed to pay the amount of the decree by instalments, the provisions of s. 210 of Act X. of 1877 were not applicable, and such surety had not become a party to the decree as altered by the Munsif; that such surety had not made himself a party to the decree by promising to pay its amount within one year; and that therefore his liability was not one which could be enforced in execution of the decree under s. 253 of Act X. of 1877.—*Chandan Kuar* (Surety) *v. Tirkha Ram* (Decree-holder), I. L. R., 3 All. 809.

WHERE a bond is payable by instalments, and expressly stipulates for the payment of the whole debt on failure in the payment of any instalment, the law of limitation runs on the whole amount of the bond against the obligee from the day on which the obligor first makes default in the payment of any instalment, unless the obligee waive the default, and afterwards from the day on which any fresh default is made in respect of which there is no waiver. The obligee may waive the default under Acts IX. of 1871 and XV. of 1877, sch. ii., art. 75, but the Courts may have no authority to compel him to waive it. Neither Act VIII. of 1859, s. 194, nor Act X. of 1877, s. 210, confers any authority on the Courts to relieve a contracting party from such an express stipulation in a bond payable by instalments as to the consequence of default in punctual payment of the instalments. A debt being presently

due, an agreement to pay it by instalments, with a stipulation that, on default, the creditor may demand immediate payment of the whole balance due with interest, is not to be relieved against in equity. Such a stipulation is not in the nature of a penalty, inasmuch as its object is only to secure payment in a particular manner. The defendant executed to the plaintiff a bond payable by instalments, and expressly stipulating for the payment of the whole amount on failure to pay any instalment on the day fixed. He paid the first instalment, but made default in paying the second, which fell due on the 3rd August, 1878. On the 20th August plaintiff sued to recover the whole balance due on the bond. Defendant admitted the bond, but pleaded tender of the amount of the second instalment soon after the due date, and prayed for payment by instalments without any interest. The first Court passed a decree in the plaintiff's favour for the amount claimed with costs, but ordered defendant to pay Rs. 100 and the costs at once, and the balance by yearly instalments of Rs. 100 each with interest at 6 per cent till payment. The District Judge, in appeal, affirmed the decree, with a slight variation as to interest, which he directed the defendant to pay on overdue instalment only. *Held* by the High Court on second appeal, that neither of the lower Courts has jurisdiction, without the consent of the parties, to substitute, for the contract made by them, terms which the Court preferred. *Held* also that plaintiff was entitled to sue on the day after that on which the default was made, viz. on the day after that fixed for the payment of the instalment, and that the Subordinate Judge had no power to rule the contrary.—Ragho Govind Paranjpe (Original Plaintiff), Appellant, v. Dipchand (Original Defendant), Respondent, I. L. R., 4 Bom. 96.

211. When the suit is for the recovery of possession of immove-

In suits for land, Court may decree payment of mesne-profits with interest. **able property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne-profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.**

Explanation—‘Mesne-profits’ of property mean those profits which the person in wrongful possession of such property actually received, or might, with ordinary diligence, have received, therefrom, together with interest on such profits.

WHERE the parties to a suit for certain land and for the payment of mesne-profits in respect of the same were co sharers in the estate comprising such land, and the defendants had themselves occupied and cultivated such land, *held* that the most reasonable and fitting mode of assessing such mesne-profits was to ascertain what would be a fair rent for such land if it had been let to an ordinary tenant and had not been cultivated by the defendants. Both parties appealed from the decree of the Court of first instance, and both the appeals were dismissed by the lower Appellate Court. The plaintiff appealed to the High Court from the decree of the lower Appellate Court dismissing his appeal, whereupon the defendant took objections to the decree of the lower Appellate Court dismissing his appeal. *Held* that such objections could not be entertained.—Ganga Pershad (Plaintiff) v. Gajadhar Pershad and others (Defendant), I. L. R., 2 All 651.

212. When the suit is for the recovery of possession of immoveable

Court may determine amount of mesne profits prior to suit, or may reserve inquiry. **property and for mesne-profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property, and direct an inquiry into the amount of mesne-profits, and dispose of the same on further orders.**

In the course of a suit for declaration of right to property, and for partition, a compromise was entered into, by which it was agreed that certain property already ascertained should be divided in certain proportions, and that certain other property, not yet ascertained, should, on being ascertained, be partitioned on the same basis. The Court merely recorded the compromise, and declared that the decree should be according to terms therein set out. *Held* that this decree could only be executed as to the property which had been ascertained as divisible, and that as to the other property the decree must be taken as declaratory only. The Court executing a decree is bound by the terms of the decree, and it is only in cases provided for by ss 211 and 212 of Act X. of 1877, corresponding with ss. 196 and 197 of Act VIII. of 1859, that it is at liberty to determine the rights of the litigants in proceedings taken after decree.—*Ramlapit Ram and others (Judgment-debtors), Appellants, v. Chooa Ram and another (Decree holders), Respondents; Chooa Ram and another (Decree holders), Appellants, v. Ramlapit Ram and others (Judgment-debtors), Respondents*, 4 Cal. Law Rep 97.

213. When the suit is for an account of any property and for its due administration under the decree of the Court, the Court, before making the decree, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent;

and all persons who, in any such case, would be entitled to be paid out of such property, may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Applications under section 265 of the Indian Contract Act, 1872, shall be deemed to be suits within the meaning of this section.

A SUIT for winding up an expired partnership can be brought in the District Court under s. 265 of the Contract Act (IX. of 1872) and s. 213 of the Civil Procedure Code (Act XIV. of 1882.) But the jurisdiction of the ordinary Courts is not annulled by the special jurisdiction assigned to the District Court by section 265 of the Contract Act. Any one having a cause of action arising out of partnership-transactions may sue the person liable in the ordinary Court. The jurisdiction of such Court, however, does not extend to the case of a winding up of an expired partnership. This jurisdiction is given to the District Court by s. 265 of the Contract Act, and when, along with a new mode of relief, particular jurisdiction is constituted to administer it, the Court specified, and no other, is to be understood as vested with authority. Hence, though administration for the purpose may apparently be sought in the subordinate Courts, it can be obtained, in the case of an expired partnership, only in the District Court or the High Court. But the jurisdiction of the subordinate Courts in other respects is not extinguished. An apparent cause of action gives a right to sue in them for such relief as they can afford, though not for the particular kind of relief contemplated in s. 265 of the Contract Act. Where in a suit a cause of action appears which in itself is cognizable by an inferior Court, such a Court is not justified in rejecting the suit, merely because it is one in which the District Court might have jurisdiction under s. 265 of the Contract Act. Where an application under s. 265 of the Contract Act is presented to the District Court, that Court should determine whether it is (1) a mere case of administration, or (2) of administration sought as a cloak for strictly litigious claim, or (3) of administration *plus* claims involving litigation of the ordinary

means. In the second case it may properly decline a function that properly belongs to an ordinary Court. In the last case it may either assume the administration of the estate of the firm, or decline to do so, according to circumstances subject to appeal, and in the former case it may either itself deal with all questions arising between the ex-partners, or if these be of such a kind as to form separable subjects of adjudication, it can direct the party in each case interested to proceed on the particular alleged cause of action in the Court having ordinary jurisdiction, and itself use the result as an element of its administration.—*Adarji Dorabji v. Eraksháh Dhanji*, I. L. R., 8 Bom. 272.

214. When the suit is to enforce a right of pre-emption in respect

Suit to enforce right of pre-emption. of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that, on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that, if such money and costs are not so paid, the suit shall stand dismissed with costs.

THE decree of the Court of first instance in a suit to enforce a right of pre-emption directed that the sum which that Court had ascertained to be the purchase-money should be deposited within one month from the date of the decree. Plaintiff appealed, contending that such sum was not the purchase money. While the appeal was pending, the time fixed by the decree of the Court of first instance expired without any deposit having been made. The Appellate Court dismissed the appeal, fixing by its decree, of its own motion, a further time for the deposit. *Held* that the Appellate Court was competent to extend the time for making the deposit, and its action and order did not contravene the provisions of Act X. of 1877, s. 214.—*Parshadi Lall v. Ram Dial*, I. L. R., 2 All. 744.

M SUEDE K and J to enforce a right of pre-emption in respect of property which he alleged K had sold to J. K denied that she had sold such property to J. J set up as a defence that M had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. J appealed, making M and K respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. J then appealed to the High Court, making K the respondent. *Held* that neither the appeal from the original decree in the suit, nor the appeal from appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—*Jumna Singh and another (Defendants) v. Kamar-un-nisa (Plaintiff)*, I. L. R., 3 All. 152 (F. B.).

THE decree in a suit to enforce a right of pre-emption, dated the 12th December, 1879, declared that the plaintiff should obtain possession of the property on payment of the purchase-money "within thirty days," but that, if such money was not so paid, the suit should stand dismissed. The period specified in the decree for the payment of the purchase-money, the day on which the decree was made not being computed, expired on the 11th January following. That day was a Sunday: the plaintiff paid the purchase-money into Court on the next day, the 12th January. *Held* that, inasmuch as the day on which the decree was made should not be taken into account in computing the period specified in the decree for the payment of the purchase-money, nor the last day of that period, that day being a Sunday, the plaintiff had complied with the condition imposed on him by the decree.

Seemle that, if the plaintiff had actually failed to deposit the purchase-money within thirty days as directed by the decree, his suit would have been liable to be dismissed, as he could not have claimed to have such period computed from the date the decree became final.—*Dabi Din Rai (Plaintiff) v. Muhammad Ali and others (Defendants)*, I. L. R., 3 All. 850.

THE decree in a suit to enforce a right of pre-emption directed, in accordance with the provisions of s. 214 of the Civil Procedure Code, that the plaintiff should obtain possession of the property and recover costs of the suit from the defendants (vendor and vendee) on payment of the purchase-money within a fixed time, but that, on default of such payment, the suit should stand dismissed. The plaintiff deposited within time the purchase-money with the exception of a sum less than the amount of costs awarded to him. He subsequently applied for delivery of possession of the property in execution of the decree and for the recovery of the costs awarded to him, deducting from such costs the unpaid portion of the purchase-money. *Held*, applying, by analogy of ss. 221 and 247 of the Civil Procedure Code, the equitable doctrine of set-off, that the plaintiff was entitled, when depositing the purchase-money under the decree, to deduct therefrom the sum the decree awarded to him as costs, and that, therefore, the decree did not become null and void by reason that he had not deposited the full amount of the purchase-money within time. *Degumburee Dabee v. Eshan Chunder Sein* (9 W. R. 230); *Jugo Mohun Bukshee v. Socrendro Nath Roy Chowdhry* (13 W. R. 106); and *Brijnath Dass v. Juggarnath Dass* (I. L. R., 4 Cal. 742) referred to.—*Ishri v. Gopal Saran*, I. L. R., 6 All. 351.

THE plaintiff in a suit to enforce a right of pre-emption obtained a decree to the effect mentioned in s. 214 of the Civil Procedure Code. On payment by him of the purchase money into Court, the defendants objected, in the execution-department, to such payment on the ground that it had not been made within time. The Court which made the decree disallowed the objection. The defendants appealed from the order disallowing the objection. They had previously appealed from the decree. The Appellate Court heard both appeals together, and, holding that the purchase-money had not been paid into Court within time, reversed the decree, and allowed the objection. The plaintiff preferred a second appeal to the High Court from the Appellate Court's decree, which was admitted. He also preferred an appeal from the appellate order allowing the objection, but this appeal was rejected as being beyond time, and such order became final. *Held* that, inasmuch as the question whether the plaintiff had paid the purchase-money into Court within time was not one relating to the execution of the decree within the meaning of s. 244 of the Civil Procedure Code, but was one which should be decided in the suit itself, and therefore the proceedings in the execution-department touching that question were ill-founded, such order was not a bar to the hearing of the second appeal preferred by the plaintiff.—*Muhammad Ali and others v. Debi Din Rai*, I. L. R. 4 All. 420.

215. When the suit is for the dissolution of a partnership, the

Suit for dissolution of Court, before making its decree, may pass an partnership. order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

A SUIT for dissolution of a partnership, taking the accounts of the firm, and a declaration of the plaintiff's right to a certain share in the debts due to the firm, was, with reference to the value of the subject-matter of the suit, instituted in the Court of a Munsif. The matters in difference in the suit were eventually referred to arbitration under chap. xxxvii. of the Code of Civil Procedure, and an award was given declaring the plaintiff entitled to recover a certain sum from the defendant. Judgment and a decree were given in accordance with the award. *Held* that the award, notwithstanding the question whether the suit was cognizable in the Munsif's Court, was entertainable. *Bhágirath v. Ram Ghulam* (I. L. R., 4 All. 283) referred to. *Held* also that the suit was not an application of the nature mentioned in s. 265 of the Contract Act, 1872, but a suit of the nature mentioned in s. 215 of the Civil Procedure Code, and was, therefore, not cognizable in the District Court, but in the Court of the Munsif. *Prosad Doss Mullick v. Russick Lal Mullick* (I. L. R., 7 Cal. 157) and *Ram Chunder Shaha v. Manick Chunder Banikya* (I. L. R., 7 Cal. 428) dissented from.—*Kalian Das v. Ganga Sahai*, I. L. R., 5 All. 500.

IN A suit for an account of partnership-transactions, the Subordinate Judge, in whose Court the suit was instituted, framed certain issues with the object of ascertaining who managed the business; with whom the partnership-property was; whether the defendants ought to account; what was the capital, and what the expenditure and profits of the firm; and, after taking evidence on those points, dismissed the suit. *Held* that the Subordinate Judge should have followed the course pointed out in forms 132 and 133 of sch. iv. of the Civil Procedure Code, and at the first hearing should have determined whether there had been a partnership; what were its conditions; was it dissolved, or ought it to be dissolved; and who were the parties interested, and in what shares; and, upon determining these questions, should have directed accounts to be taken; and, after the accounts had been taken, should have made a final decree. *Held* also that the suit should not have been instituted in the Court of the Subordinate Judge, and the case was transferred to the Court of the District Judge. The plaint in a partnership-suit ought to be framed on the lines of form 113 in sch. iv. of the Code, and the accounts should be taken as prayed in that form. Under ordinary circumstances, the costs of a partnership-suit should be paid out of the assets of the partnership, or in default of assets by the partners in proportion to their respective shares, unless any partner denies the fact of a partnership, or opposes obstacles to the taking of the accounts, and so renders a suit necessary, when he is usually made to pay the costs up to the hearing.—*Ram Chunder Shah v. Manick Chunder Banikya*, I. L. R., 7 Cal. 428.

T, B, R, and W, the owners of a certain estate in equal shares, in 1863 entered into a partnership "for the cultivation of tea and other products" upon such estate. In 1864, H, E, and I, joined the firm. In 1870 H died; and in 1871 T purchased his share and those of E and I, and in 1873 of R. In 1875, T gave the Delhi and London Bank a mortgage on such estate as security for the repayment of money which he had borrowed from the Bank ostensibly for the purposes of the estate. The Bank obtained a decree against him personally for the money, in execution of which his rights and interests in the estate were put up for sale on the 20th June, 1877, and were purchased by the Bank, which obtained possession of the estate in August, 1877. In August, 1879, B and W's executor sued T and the Bank, claiming a declaration that they were or had been partners with T in the estate; that if the partnership should be held to be subsisting, it might be dissolved, or that, if it had ceased to exist, the date of its termination might be fixed; and that in either event a liquidator might be appointed to take an account, and, after realizing assets and discharging liabilities, might be ordered to pay them each one-third of such balance as remained. The suit was instituted in the Court of a District Judge. He transferred it to the Court of a Subordinate Judge. The High Court subsequently transferred it to its own file. *Held* that the suit was not one falling within the purview of s. 265 of the Contract Act; but assuming that it was such a suit, and the Subordinate Judge had no jurisdiction, the High Court was nevertheless competent to transfer it. That the Bank, as T's representative by purchase, had been properly joined as a defendant in the suit. That the period of limitation applicable to the suit was that provided in art. 120, and not art. 106, Act XV. of 1877; but that in either case the suit was within time, as the partnership was dissolved, and consequently time began to run, not from the death of H, or the purchases by T of his share or those of E and I in 1871, or of R in 1873, but in August 1877, when the defendant Bank took possession of the partnership-property. That, as the effect of the purchases by T in 1871 and 1873 was to relieve the estates of H, E and I, and R, of all part and future liabilities of the partnership, in respect of which B and W still continued as liable as T, and to which they would have to contribute to discharge, such purchases should be regarded and treated as made on behalf of the partnership, and therefore at the time of the execution of the mortgage of the estate B, W, and T were interested in the estate to the extent of one-third each. That, although T was not authorized, either actually or impliedly, by B and W to mortgage the estate, and the mortgage therefore was not binding on them, yet as they allowed him to conduct the business of the estate in such a manner as to make it appear that the control and management of it rested with him, and he was for all ordinary business-purposes their representative, B and W were bound, in any accounting that might take place, to repay the defendant Bank for such advances as were made to T for the necessary purposes of the estate, in the same proportion as they must discharge debts due to other creditors. That T was entitled to be reimbursed such moneys of his own as

he had expended within the legitimate scope and for the proper purposes of the partnership as originally contemplated by the parties. Directions to the liquidator appointed how to proceed.—*Harrison and another v. Delhi and London Bank and another*, I. L. R., 4 All. 437.

215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit. M.S.C.O.

Suit for account between principal and agent. Decree when set-off is allowed. *Decree when set-off is allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.*

216. If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party. M.S.C.O.

The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

APPLICATION for execution of a decree was made on the 10th November 1869, and on the 27th November, 1869, notice issued under s. 216 of the Civil Procedure Code. Again, on the 4th February, 1873, application was made for execution, and notice was issued on the 19th February, 1873, under s. 216. A subsequent application for execution was made on the 31st August, 1874, and the order for notice to issue, under s. 216, was made on the same day. The question raised in appeal against the order to issue execution was whether the plaintiff's right to execution was barred, and had been so when the application, dated 31st August, 1874, for execution, was made. *Held* on appeal by the High Court (Kernan and Kindersley, JJ.) that as the application for execution on the 4th February, 1873, being more than three years after the date of issuing the last prior notice under s. 216, was, 27th November, 1869, was late, under a . 167, para. 5, Act IX. of 1871, execution was barred by limitation at and before the date of that application, and that this bar was not removed by the circumstance that the judgment-debtor had allowed the service of the notice on him in February, 1873, to pass unchallenged. *Rāja Chilicany v. Rajávu Naidu* (5 Mad. H. C. R. 100) distinguished. *Held* also (following *Chunder Coomar Roy v. Bhogobutty Prosenno Roy*, I. L. R., 3 Cal. 235) that "applications to enforce a decree" in para 4 of art 167, Act IX. of 1871, mean "applications under s. 212 or otherwise by which proceedings in execution are commenced, and not applications of an incidental kind made during the pendency of such proceedings."—*Prabhacara Row v. Potannath*, I. L. R., 2 Mad. 1.

Effect of decree as to sum awarded to defendant.

Certified copies of judgment and decree to be furnished.

217. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense. M.S.C.O.

CHAPTER XVIII.

OF COSTS.

218. When disposing of any application under this Code, the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

Costs of applications. *Costs of applications.*

219. The judgment shall direct by whom the costs of each party

Judgment to direct by whom costs to be paid. are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

If the Official Assignee defends a suit, he is liable, in the event of failure, to be ordered to pay the plaintiff's costs in the same way as any other defendant; and if the estate be insufficient to pay the costs, he will have to bear them personally. It is for him to protect himself by getting a guarantee of indemnity from the parties who set him in motion.—James Bevis v. C. A. Turner, I. L. R., 7 Bom. 484.

M.S.C.C. 220. The Court shall have full power to give and apportion costs

Power of Court as to costs. of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code, and not forming part of a decree, may be executed as if it were a decree for money.

M.S.C.C. 221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

Costs may be set-off against sum admitted or found to be due. The decree in a redemption-suit directed the plaintiff (the mortgagor) to pay the mortgage-money and interest to the defendant, and directed the defendant to pay the plaintiff the costs of the suit. *Held* that the plaintiff was entitled to set-off the amount of his taxed costs against the mortgage-money which he was liable to pay under the decree, notwithstanding any claim that the defendant's attorney might have against the defendant in respect of the defendant's costs of suit.—Brijnath Dass v. Juggernath Dass, I. L. R., 4 Cal. 742.

M.S.C.C. 222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.

Interest on costs. Payment of costs out of subject-matter. On the 21st August, 1876, certain immoveable property belonging to M was put up for sale, and was purchased by R. On the 20th April, 1877, such sale was set aside under s. 256 of Act VIII. of 1859, on the ground that the order attaching such property and the notifications of sale had not, as required by s. 222, been signed by the Court executing the decree, but by the munsarim of the Court. On the 27th June, 1877, M conveyed such property to H, who purchased it *bond fide*, and for value, and satisfied the incumbrances existing thereon. On the 15th April, 1878, R sued H and M to have the order setting aside such sale set aside, and to have such sale confirmed in his favour, on the ground that it had been improperly set aside under s. 256 of Act VIII. of 1859, the judgment-debtor not having been prejudiced by the irregularities in respect whereof such sale had been set aside. *Held* (by Oldfield, J.) that although such sale might have been improperly set aside, yet inasmuch as the order of attachment and the notifications of sale could have no legal effect, having been signed by the munsarim of the Court executing the decree, and not by the Court, as required by s. 222 of Act VIII. of 1859, and inasmuch as it would be inequitable, after the incumbrances on such property had been satisfied and the state of things changed, to allow R, after standing by for a year, and permitting dealings with the property, to come in and take advantage of the change of circumstances, and obtain a property become much more valuable at the price he

originally offered, R ought not to obtain the relief which he sought. *Held* (by Straught, J.) that the fact that the Court executing the decree had not signed the order of attachment and the notifications of sale vitiated the proceedings in execution *ab initio*, and rendered the sale which R desired to have confirmed void, and R's suit therefore failed and had properly been dismissed—*Ram Dial (Plaintiff) v. Mahtab Singh and others (Defendants)*, I. L. R., 3 All. 701.

CHAPTER XIX.

OF THE EXECUTION OF DECREES.

A.—Of the Court by which Decrees may be executed.

223. A decree may be executed either by the Court which passed M.S.C.C. Court may which decree it, or by the Court to which it is sent for execution under the provisions hereinafter contained.
may be executed.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(a) if the person against whom the decree is passed actually and voluntarily resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree, and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers, for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may, of its own motion, send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognizable by a Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay, or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay, or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (a), (b), and (c) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

SMALL Cause Courts in the mufassal are not at liberty to execute decrees against moveable property beyond their local jurisdiction.—*Munsuk Mosundas (Plaintiff) v. Shiva Ram Devi Singh (Defendant)*, I. L. R., 2 Bom. 532.

A MUFASSAL Court of Small Causes must adopt the machinery of s. 223 of the Civil Procedure Code in all cases where execution is sought against persons or property outside its local jurisdiction. Such a Court, therefore, cannot attach the salary of a public officer where the same is disbursed outside its local jurisdiction. *Hossein Ally v. Ashotosh Gangooly* (3 Cal. L. R. 30) followed.—*Parbati Charan v. Pauchanand*, I. L. R., 6 All 243.

ALTHOUGH by the Madras Civil Courts' Act, 1871, the ordinary jurisdiction of Munsifs is limited in suits and applications of a civil nature to those in which the subject-matter does not exceed in value Rs. 2,500, s. 223 of the Code of Civil Procedure gives jurisdiction to a Munsif's Court to execute a decree in a suit beyond its jurisdiction which has been transferred to it for execution by a District Court.—*Narasayya v. Venkatakrishnayya*, I. L. R., 7 Mad. 397.

WHETHER a decree for rent, under Act X. of 1859, made in one district, can be transferred to another for execution, is a question which the High Court can decide in the exercise of its "superintendence over all Courts subject to its appellate jurisdiction," under 24 and 25 Vic., c. 104, s. 15. Decrees for rent made by the Collector under s. 23 of Act X. of 1859 can be executed by a Civil Court to which they may be transferred under the sections of the Code of Civil Procedure relating to "the execution of a decree out of the jurisdiction of the Court by which it was passed."—*Nilmoni Singh Deo v. Taranath Mukerjee*, I. L. R., 9 Cal. 295.

THE plaintiff in a suit for money obtained a decree against all the defendants except P, and among them K. On appeal the Court of first appeal gave them a decree against P. In execution of this decree they attached and were paid, as belonging to P, certain money deposited in the Government Treasury in K's name. On appeal by P the Court of second appeal reversed this decree, and restored the decree of the first Court dismissing the suit as regards P. P thereupon applied in execution of his decree for a refund of the money. The plaintiffs objected on the ground that the money belonged to K. *Held* that the Court executing P's decree was not competent to decide the question whether the money belonged to P or to K, such question not being one between P and them only, but involving and raising a question of title between him and K as to their conflicting claims, *inter se*, to the money.—*Pusai v. Mahadeo Prasad*, I. L. R., 6 All. 12.

THE holders of a decree, made in 1866, against K and certain other persons jointly, applied to recover mesne-profits in execution thereof. K paid the decree-holders the mesne-profits claimed, and then sued his co-judgment-debtors for contribution, and in 1878 obtained a decree against them. Subsequently the holders of the decree of 1866 again applied to recover mesne-profits in execution thereof, and in the proceedings which followed it was decided that mesne-profits were not recoverable under the decree. After this K's representatives applied for execution of the decree of 1878. The lower Courts refused to execute the decree on the ground that, as under the decree of 1866, on which the decree of 1878 was based, mesne-profits were not recoverable, it would not be equitable to allow a decree for contribution passed on a contrary supposition to be executed. *Held* that the lower Courts were not competent to go behind the decree of 1878, but must deal with it as it stood.—*Ramphal Rai v. Ram Baran Rai*, I. L. R., 5 All. 53.

PER GARTH, C.J.—S. 649 of the Civil Procedure Code, as amended by Act XII. of 1879, which explains the meaning of the expression, the "Court which passed the decree," does not exclude the Court which originally passed the decree as being a Court in which an application for execution shall be made, but merely includes another Court. When, therefore, a Court which has passed a decree has ceased to have jurisdiction to execute it, the application for execution may be made either to that Court, although it has ceased to have jurisdiction to execute the decree, or to the Court which (if the suit wherein the decree was passed were instituted at the time of making application to execute it) would have jurisdiction to try the suit. *Per Field, J.*—A Court does not cease to be "the Court which passed the decree" merely by reason that the head-quarters of such Court are removed to another place,

or merely because the local limits of the jurisdiction of such Court are altered. An application for the transfer of a decree under the provisions of s. 223 and the following section of Act X. of 1877 is a step in aid of the execution of the decree within the meaning of cl. 4, art. 179. sch. ii., of Act XV. of 1877.—*Latchman Pundeh v. Maddan Mohun Shye*, I. L. R., 6 Cal. 513.

THE Courts of Subordinate Judges invested with the jurisdiction of a Judge of a Small Cause Court under s. 28 of Act XIV. of 1869 does not thereby become "Courts of Small Causes constituted under Act XI. of 1865." They merely exercise a similar jurisdiction. This makes their decisions final in the cases to which the jurisdiction extends, but it does not imply that the variations of procedure prescribed expressly for the Courts constituted under Act XI. of 1865 are applicable to Courts constituted under a different Act and subject to different conditions. The Court of a Subordinate Judge exercising Small Cause Court powers is, under s. 5 of the Code of Civil Procedure (Act XIV. of 1882), one of the "other Courts exercising jurisdiction of a Court of Small Causes," and, as such, its procedure is governed by the Civil Procedure Code without the variations provided by Act XI. of 1865. Under s. 223 (d) of the Civil Procedure Code the Court which has passed a decree in its Small Cause Court jurisdiction may, for any good reason to be recorded in writing, transfer its decree to the other branch of the same Court, as it might to a different Court, for execution, without requiring a certificate under s. 20 of Act XI. of 1865. For this purpose the two branches or sides of the Subordinate Judge's Court may be regarded as different Courts.—*Bhagván Dayáji v. Bálu*, I. L. R., 8 Bom. 230.

Procedure when Court desires that its own decree shall be executed by another Court.

224. The Court sending a decree for execution under section 223 shall send, **M.S.C.O.**

- (a) a copy of the decree ;
- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted ; and
- (c) a copy of any order for the execution of the decree, and if no such order has been made, a certificate to that effect.

THE jurisdiction of a Court to which a decree has been transferred for execution is strictly limited to carrying out such execution. Such Court has no power to issue a certificate under ss. 285 and 236 of Act VIII of 1859, transferring the decree, already transferred to it, to another Court for execution. The Court to which a decree has been properly transferred for execution having struck the case off the file, a subsequent application for a further transfer of the case to another Court for execution should be made to the Court which originally passed the decree sought to be executed. *Bagram v. Wise* (1 B. L. R., F. B., 91) considered.—*Shib Narain Shah and another (Decree-holders) v. Bipinbehari Biswas and another (Judgment-debtor)*, I. L. R., 3 Cal. 512.

225. The Court to which a decree is so sent shall cause such copies **M.S.C.O.**
 Court receiving copies of decree, &c., to file same without proof. and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

226. When such copies are so filed, the decree or order may, if the **M.S.C.O.**
 Execution of decree or order by Court to which it is sent. Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

M.S.C.C. 227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

M.S.C.C. 228. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Whether a decree for rent, under Act X. of 1859, made in one district, can be transferred to another for execution, is a question which the High Court can decide in the exercise of its "superintendence over all Courts subject to its appellate jurisdiction," under 24 and 25 Vic., c. 104, s. 15. Decrees for rent made by the Collector under s. 23 of Act X. of 1859 can be executed by a Civil Court to which they may be transferred under the sections of the Code of Civil Procedure relating to "the execution of a decree out of the jurisdiction of the Court by which it was passed."—*Nilmoti Singh Deo v. Taranath Mukerjee*, I. L. R., 9 Cal 295.

M.S.C.C. 229. A decree of any Court established by the authority of the Governor-General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

B.—Of Application for Execution.

M.S.C.C. 230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely):—

(a) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

(b) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said

term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years.

THE concluding clause of the same section refers to the question of limitation, and not that of due diligence—*Sohan Lall v. Karim Baksh*, I. L. R., 2 All. 281.

S. 230 of the Code of Civil Procedure, 1882, does not affect the period of limitation prescribed by art. 180 of sch. ii. of the Indian Limitation Act, 1877.—*Ganapathi v. Balasundara*, I. L. R., 7 Mad. 540.

THE words, "the last preceding application," in Act X. of 1877, s. 230, cl. 3, mean an application under that section, and not an application under Act VIII. of 1859—*Ram Kishen v. Sedha*, I. L. R., 2 All. 275.

AFTER a sale of land in execution of a decree, and before its confirmation, the judgment-debtor cannot object to the validity of the sale on the ground that the execution of the decree is barred by the provisions of s. 230 of the Code of Civil Procedure, 1877.—*Gangáthara v. Rathábái*, I. L. R., 6 Mad. 237.

UNDER the Civil Procedure Code (Act VIII. of 1859), an application to the Court to continue the attachment of immoveable property, but to stay the sale of it, *held* to be a proceeding to keep in force the decree—*Nukanna and two others, Minois* (by their mother and guardian, *Sitairina*), *v. Ramsami*, I. L. R., 2 Mad. 218.

PER INNES, J.—The right to execute decrees having been curtailed by s. 230 of the Code of Civil Procedure, 1877, the provisions of the Limitation Act should be construed as far as possible so as to prevent the defeat of *bona fide* endeavours to secure the fruits of a decree once obtained.—*Kunhi Mannan v. Seshagiri Bhakthan*, I. L. R., 5 Mad. 141.

A JUDGMENT-DEBTOR, who, though able to pay his judgment-debt, dishonestly evades payment for more than twelve years by eluding service of warrants and making applications to the Court (which had the effect for the time of staying execution), is guilty of fraud within the meaning of s. 230 of the Code of Civil Procedure.—*Annámalai v. Rangasámi*, I. L. R., 6 Mad. 365.

THE date referred to in the last paragraph of s. 230 of the Civil Procedure Code (Act X. of 1877) as the date of "the passing of" that Act held to be the 30th March, 1877, the date when that Act received the assent of the Governor-General, and not the 1st October, 1877, the date of the coming into force of that Act.—*Damodardás Haridás v. Uttamchand Saviachaud*, I. L. R., 7 Bom. 214.

WHERE an application to execute a decree was made under s. 230 of the Code of Civil Procedure before the amendment Act (XII. of 1879) came into force, but was not disposed of until after s. 230 was altered by that Act, *held* that the rule in *Wright v. Hale* (6 H. & N. 227) applied, and that the Act, as amended, was the law to be applied.—*Pápá Sastrial* (Plaintiff), Appellant, *v. Anuntarama Sastrial* (Defendant), Respondent, I. L. R., 3 Mad. 98.

AN ORDER under s. 230 of Act X. of 1877 by a Court executing a decree refusing an application to execute it at the same time against the person and property of the judgment-debtor, being a "decree" under s. 2 of the Act, an appeal lies against such order, and the Appellate Court is bound to consider whether the lower Court has properly exercised the discretion vested in it by s. 230 of that Act.—*Chena Pemáji v. Ghelabhái Nárandás*, I. L. R., 7 Bom. 301.

UNDER s. 230 of Act X. of 1877, an application for execution is said to be 'granted,' when it is made regularly and formally. The expression 'granted' is equivalent to the expression 'admitted' as used in s. 245. Where, therefore, an application for execution under s. 230 of Act X. of 1877 is not 'granted,' a subsequent regular and formal application under the same section may be allowed if made within time.—*Dewan Ali v. Soroshibala Dabee*, I. L. R., 8 Cal. 297.

WHERE an application to execute a decree of 1862 was made under s. 230 of the Code of Civil Procedure, 1877, on the 14th of December, 1877, and a notice was issued to the judgment-debtor under s. 248, but no further steps were taken, *held* that a subsequent application made within three years from that date was not affected by the twelve years' rule, as the last preceding application had not been granted within the meaning of s. 230.—*Chengaya v. Appasami*, I. L. R., 6 Mad. 172.

THE parties to a decree presented a petition to the Court executing decree, stating that it had been agreed between them that the amount of the decree should be paid by ten monthly instalments of Rs. 500 each. The Court made an order directing that such petition should be filed. *Held* that this order did not amount to one directing payment of money to be made at a certain date, which would give a fresh period of limitation under s. 230 (b) of the Civil Procedure Code.—*Bal Chand and another (Judgment-debtors) v. Raghunath Das and another (Decree-holders)*, I. L. R., 4 All. 155.

NO PROCESS can legally issue upon an application for the execution of a decree already barred by limitation, nor can an application made under such circumstances be a valid application, or one which, under the Act, would give the execution-creditor a fresh period of limitation. Unless it can be shown that such was the express intention of the Legislature, none of the provisions of the present Limitation Act (XV. of 1877) can be made applicable to any matter which, at the time when such Limitation Act came into force, had already become barred by the operation of the prior Limitation Act.—*Shumbhoo Nath Shah (Decree-holder) v. Guruchurn Lahiri (Judgment-debtor)*, I. L. R., 5 Cal. 894.

ON the 1st June, 1880, several decree-holders applied to the subordinate Civil Court of Pámer for execution of their decree. They had taken out execution several times previously, the date of their last preceding application being 1st June, 1877. The Subordinate Judge was of opinion that the applications were barred under the last clause of s. 230 of the Civil Procedure Code (Act X. of 1877). On his referring the cases to the High Court, *held* that the applications were not barred, inasmuch as the previous applications for execution had not been made under s. 230 of Act X. of 1877, that Act not being then in force.—*Anandráv Chimuji Avati (Plaintiff) v. Thakarchand (Defendant)*, I. L. R., 5 Bom. 245.

AN APPLICATION for execution of a decree, which was more than twelve years old, having been made on the 4th August, 1880, under s. 230 of the Code of Civil Procedure, an order was made for the attachment of the moveable property of the judgment-debtor. No moveable property having been found, the Court was asked to attach his immoveable property, but, refusing to do so, struck off the proceedings. The application for execution having been renewed on the 13th September, 1880, it was *held* that the former application for execution must be treated as having been granted within the meaning of s. 230 of the Code, and consequently that the further application was barred under that section, the decree being more than 12 years old.—*Afiannessa Chaudhrain (Decree-holder), Appellant, v. Sharafutallah (Judgment-debtor), Respondent*, 9 Cal. Law Rep. 321.

AN APPLICATION, under Act VIII. of 1859, for execution of a decree, was rejected by the Judge on the ground that the judgment-creditor had withdrawn from the former application. This order was reversed on appeal, and the case was sent back for disposal on its merits. The Judge then held that Act X. of 1877, which had just come into force, applied, and, on the ground that the decree-holder had failed to get execution upon his former application, dismissed the petition. The Judge referred the case to the High Court upon the question whether he was, under the circumstances, at liberty to grant the application. *Held* that he was. The application should have been dealt with under the law which was in force at the time execution was sought. The effect of the provisions of Act X. of 1877, s. 230, considered.—*Byraddi Subbareddi v. Dásuppa Rau*, I. L. R., 1 Mad. 403.

THE transferee of a decree applied, while an application by the original holder of such decree to execute it was pending, to be allowed to execute it. The Court, in accordance with Act X. of 1877, s. 232, directed notice of the transferee's application to be given to the transferor and the judgment-debtor. The transferee failed to pay the court-fee leviable for the issue of such notice, and the Court dismissed

his application. The transferee subsequently made a second application to be allowed to execute the decree. *Held* that such application could not be rejected, with reference to s. 230, on the ground that due diligence had not been used on the former application to procure complete satisfaction of the decree, because such application had not been granted, and, therefore, the question whether "on the last preceding application" due diligence was used to procure such satisfaction did not arise.—*Sadik Ali Khan v. Muhammad Hussain Khan*, I. L. R., 2 All 384.

WHEREAN an application was made under s. 230 of the Civil Procedure Code, 1877, as amended by Act XII. of 1879, for execution of a decree more than twelve years old, and the application was granted, *held* that a subsequent application for execution of the decree, under s. 230 of the Civil Procedure Code, 1882, should have been refused, since the decree had been once allowed the benefit of the three years' grace under the last paragraph of s. 230 of the Code of 1877, and then became dead or unexecutable. *Held* that there is nothing in the Code of 1882 to justify the conclusion that it was intended to revive decrees which had become dead before it became law, and that here the decree-holder's right having already become dead before the enactment of the present Code, the passing of that Code could not bring that right into existence again. *Musharraf Begam Ali v. Ghalib Ali* (I. L. R., 6 All. 189) distinguished.—*Bhawani Das v. Daulat Ram*, I. L. R., 6 All 388.

IN execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution under s. 230 would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Prinsep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—*Sreenath Goocho v. Yusoo Khan*, I. L. R., 7 Cal. 556.

ON the 3rd June, 1879, an application was made for execution of a decree passed in 1836, and upon that application certain property was attached. On the 2nd October following, the proceedings were struck off, an order, however, being made at the same time that the attachment should continue. On the 31st December, 1880, the decree-holder applied that the property under attachment should be sold. The preceding application for execution previous to that of 3rd June, 1879, was made on the 8th August, 1877. It was objected that the proceedings upon the applications of the 31st December, 1880, and 3rd June, 1879, were barred under s. 230 of the Code of Civil Procedure. *Held* that these proceedings were not barred, inasmuch as the previous application had not been made under s. 230 of the Code. *Anandray Chimuji Avati v. Thakurchand* (I. L. R., 5 Bom. 245) followed. *Held* also that the application of 31st December, 1880, could not be treated as a fresh application for execution within the meaning of the 3rd paragraph of the section referred to.—*Paunil Huq* (Judgment debtor), Appellant, *v. Kishen Mun Dabee* (Decree-holder), Respondent, 9 Cal. Law Rep. 297.

THE plaintiff obtained a decree in 1864. The first application for execution was made in September 1869 under s. 216 of the Civil Procedure Code (Act VIII. of 1859); and after notice to the defendant as provided thereby, an order was made under that section for execution to issue. In October, 1880, an application for execution was made under s. 230 of the Civil Procedure Code of 1877, which repealed Act VIII. of 1859. *Held* that the order after notice had the effect of reviving the decree within the meaning of art. 180, sch. ii., Act XV. of 1877, and therefore the decree was not barred by the law of limitation. An order for execution under the Code, made after notice to show cause, has, on the original side of the Court, the same effect as an award of execution in pursuance of a writ of *scire facias* had under the procedure of the Supreme Court,—i.e., it creates a revivor of the decree. The clause of s. 230 of Act X. of 1877, which prohibits a subsequent application for

execution, only applies where the previous application has been made under that section, and not where such previous application has been made under Act VIII. of 1859—*Ashootosh Dutt v. Doorga Churn Chatterjee*, I. L. R., 6 Cal 504.

THE holder of a decree applied for execution under s. 230 of Act X. of 1877, and the application was granted. Within three years after the passing of Act XIV. of 1882, by which Act X. of 1877 was repealed, he applied, for the first time, under s. 230 of the former Act, for execution of the decree. At the time this application was made more than twelve years had elapsed from the date of the decree. *Held* by Straight, Brodhurst, and Tyrrell, JJ., that the application might be granted, it being the first made under s. 230 of Act XIV. of 1882, and the first made after the expiration of twelve years from the date of the decree, and not being barred by the last paragraph of s. 230 of that Act, read in conjunction with the third paragraph of s. 230 of Act X. of 1877, the "law in force" mentioned in the last paragraph of s. 230 of Act XIV. of 1882 referring to the law of limitation in force at the time the Act was passed, and not to the third paragraph of s. 230 of Act X. of 1877. *Held* by Stuart, C.J., and Oldfield, J., that the application should not be granted, the effect of the last paragraph of s. 230 of Act XIV. of 1882 being to bar any proceedings to enforce a decree under that Act which would have been barred under s. 230 of Act X. of 1877, if taken thereunder, on the ground that the period of twelve years had elapsed from the dates specified in that section.—*Musharraf Begam v. Ghalib Ali*, I. L. R., 6 All. 189.

THE plaintiffs obtained a decree of the High Court of Bombay against the defendant on the 22nd February, 1867. The defendant, after the passing of the decree against him, resided in Ahmedabad. In July, plaintiff assigned his decree to L, who in 1876 assigned it to M. From time to time M obtained orders for the execution of the said decree, but was always unable to proceed to execution. The last order for execution made by the High Court was on the 4th February, 1879. In April, 1879, the decree was transmitted to the Court at Ahmedabad for execution, and that Court in September, 1879, issued a warrant of arrest against the defendant, against the order for which the defendant appealed. The said order was confirmed by the High Court on 10th February, 1880. In April, 1881, the defendant was in Bombay, and M, the decree-holder, obtained a summons calling on defendant to show cause why the decree should not be executed against him. On 3rd May the summons was made absolute. The defendant appealed, and contended that the application for execution was barred by limitation under s. 230 of the Civil Procedure Code (Act X of 1877), which was to be read with clause 180 of sch. ii of the Limitation Act (XV of 1877). *Held* that the application was not barred. Clause 180 of the second schedule of the Limitation Act (XV. of 1877) was intended to be independent of s. 230 of the Civil Procedure Code, and not to be in any way controlled by it. S. 230 does not apply to decrees made by the High Court—*Mayabhai Prembhai v. Tribhuvandas Jagivandas*, by his Assignee Motilal Tribhuvandas, I. L. R., 6 Bom. 258.

A DECREE was obtained on the 10th July, 1858, and applications to execute it were made in June, 1862, and January, 1866. The last application prior to the coming into operation of the Civil Procedure Code of 1877 was on the 10th January 1876. This proceeding was struck off. The decree-holder on the 13th June, 1879, again applied for execution: the decree was transferred to S for execution, where, on objection that it was more than twelve years old, and therefore barred by s. 230 of Act X of 1877, the execution proceedings were again struck off on the 17th January, 1880. This order was appealed against, and eventually, on the 25th April, 1881, the application was re-admitted. In June, 1881, an application was made to the S Court for transfer of the case for execution to D, which was granted, and the case transferred; but no steps having been taken by the decree-holder in the D Court, it was struck off by that Court on the 19th August, 1881. On the 4th March, 1882 (the judgment-debtor having died meanwhile), an application was made to the D Court to restore the proceedings for execution against his representative. Notices were issued, and the 2nd June was eventually fixed for the hearing. On that day no one was present on behalf of the decree-holder (whose pleader had died in the meantime), and the case was again struck off. On the 11th July, 1882, application was made to restore the proceedings, notices were issued, and a day fixed for hearing; and after numerous adjournments the objections of the judgment-debtor were overruled on that

5th March, 1883, and execution of the decree granted. On appeal the Judge found that the execution-proceedings had been continuous throughout, and that there had been no unreasonable delay in the prosecution of the execution-proceedings. *Held* that execution of the decree was not barred by s. 230 of the Code of Civil Procedure. The rights of the parties to execution-proceedings are not affected in any way by the case being "struck off" by the Court, there being no provision in the Civil Procedure Code for such a course. *Baroda Soondari Dabia v. Fergusson* (11 C. L. R. 17) followed. The only proper mode of dealing with a case, whether a regular suit or a miscellaneous proceeding, when the parties do not appear, is to dismiss it. A case so dismissed can be restored on application under s. 108, which is by s. 647 applicable as well to execution-proceedings as to suits and appeals.—*Biswa Sonan Chunder Gossyamy v. Binanda Chunder Dibingar Adhikar Gossyamy*, I. L. R., 10 Cal. 416.

231. If a decree has been passed jointly in favour of more persons M.S.C.O.

Application by joint than one, any one or more of such persons, or decree-holder. his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

THE provisions of s. 231 of the Civil Procedure Code are not applicable to the case of joint decree-holders, the execution of whose decree is conditional on their joint performance of a particular act.—*Farzand Ali v. Abdullah*, I. L. R., 6 All. 69.

ALTHOUGH the Civil Procedure Code does not allow one of several decree-holders to apply for the partial execution of a joint-decree, yet an application by one of such decree-holders for execution of the decree in respect of so much of the relief granted to all as he considers appertains to him individually may keep in force the decree as being an application according to law.—*Ponnampilath Parapravan Kuthath Haji* (Petitioner), Appellant, *v. Ponnampilath Parapravan Baotti Haji* (Counter-Petitioner), Respondent, I. L. R., 3 Mad. 79.

A JOINT-DECREE was passed in favour of A and B, and A subsequently applied for execution alone, alleging that B would not join with him in the application. The judgment-debtor stated, and B admitted, that more than half of the decretal money had been paid to the latter (out of Court), but the Court disbelieved the statement, and ordered execution to issue for the full amount of the decree. *Held* that the Court should, under s. 207 of Act VIII of 1859, have allowed execution for half the amount of the decree only.—*Brojeswari Chowdhranee* (Judgment-debtor) *v. Tripooro Soonderee Debi* (Decree-holder), 3 Cal. Law Rep. 513.

THE circumstance that the petition of one of several decree-holders in applying for execution requires amendment because of the list of property being incomplete, is no ground for declaring such application to be superseded by a later application made before the completion of the necessary amendment by another co-decree-holder for execution. Two executions of the same decree, so far as attachment of different properties of the judgment-debtor is concerned, may proceed simultaneously, though ordinarily the sales in execution should not take place simultaneously.—*Shaikh Ahmed Chaudhary* (Decree-holder), Appellant, *v. Shahzadd Khataon* (Minor Judgment-debtor), Respondent, 7 Cal. Law Rep 537.

THE representative of one of several decree-holders conveyed his interest in the decree to A. Some time afterwards A filed a petition in Court, stating that the decree had been satisfied out of Court, and the case was thereupon struck out as far as he was concerned. Subsequently the other decree-holders applied for execution of their share of the decree, but it was objected that the decree had already been satisfied by payment to A. *Held* that the other decree-holders were entitled to proceed with execution for the amount of their share, a joint decree-holder having

no power to give a discharge out of Court to a judgment-debtor for more than his own share in the decree.—*Musammam Bibi Budhun* (Judgment-debtor), Appellant, *v. Musammam Hafiza* and others (Decree-holders), Respondents, 4 Cal. Law Rep. 70.

A DECREE passed jointly in favour of more persons than one can only be legally executed as a whole for the benefit of all the decree-holders, and not partially to the extent of the interest of each individual decree-holder. *Held*, therefore, where one of two persons in whose favour a decree for money had been passed jointly applied, on the 27th April, 1880, for execution of a moiety of such decree, and the other of such persons made a similar application on the 30th April, 1880, that such applications, not being in accordance with law, were not sufficient to keep the decree in force. Also that the illegality of such applications could not be cured by a subsequent amended application for the execution of the decree as a whole preferred after the period of limitation had expired—Collector of Shahjahanpur, Manager of the Estate of Raja Jagan Nath Singh (Decree-holder), *v. Surjan Singh* and another (Judgment-debtors), 1 L. R., 4 All. 72.

A JOINT-DECREE cannot be executed by one of the several joint holders in respect only of his share of the decree. *Ram Antar v. Ajudhia Singh* (1 L. R., 1 All. 231), *The Collector of Shahjahanpur v. Surjan Singh* (1 L. R., 4 All. 72), and *Haro Sanker Saudyal v. Tara Chandra Bhattacharjee* (3 B. L. R. 114) followed. When by operation of law one of several joint judgment-debtors acquires the position of decree-holder in respect of the whole judgment-debt, the effect is to extinguish the liability of the other judgment-debtors, and the decree cannot be executed against them. But when one of them so acquires only a partial interest in the decree, the effect is not to extinguish the entire judgment-debt, but so much only of it as such judgment-debtor has so acquired. *Wise v. Abdool Ali* (7 W. R. 136), *Pogose v. Fukuooddeen Mahomed Ahsan* (25 W. R. 343), *Degumburee Dabee and Soroop Chunder Hazra* (9 W. R. 230), and *Khoshallee v. Nund Lall* (N. W. P. H. C. Rep. 1874, p. 1), referred to. *Held*, therefore, where one of several joint decree-holders applied for execution in respect of his own share only, and the joint judgment debtors under the decree had inherited the right therein of one of the joint decree holders, that the application was contrary to law; that so much of the judgment-debt as had devolved upon such persons had been extinguished; and that application should have been made for execution in respect of the entire unextinguished portion of the judgment-debt. *Brojeswari Chowdhranee v. Tripoora Soon-deree Debi* (3 C. L. R. 513) and *Bibee Budhun v. Hafezah* (4 C. L. R. 70) followed.—*Banarsi Das v. Maharani Kuar*, 1 L. R., 5 All. 27.

ON AN application for execution for the full amount due under a decree by some of several joint decree-holders, the judgment-debtor objected to execution being granted for the full amount of the decree on the ground that he had already paid off a large portion of the money due under the decree to B. one of the joint decree-holders. The payment was made out of Court, but B, who claimed to be entitled to a 12½ annas share in the decree, certified the payment in the manner prescribed by s. 258 of the Civil Procedure Code (Act XIV. of 1882), and represented that his claim had been satisfied in full. The other joint decree-holders denied B's right to the 12½ annas share claimed by him, and refused to recognize the payment said to have been made to him. The lower Court disallowed the objection, and granted execution for the full amount of the decree. *Held* that, regard being had to the provisions of the General Clauses' Act (I. of 1868), the word "decree-holder" in s. 258 of Act XIV. of 1882 should be read in the plural, and looking at the provisions of s. 231 of the later Act, the Court ought not to recognize payments made out of Court, unless made and certified for the benefit of all the joint decree-holders of any portion of the decree in excess of that to which the decree-holder so paid is undisputedly entitled. *Held* also that a judgment-debtor is entitled to credit for any sum paid *bond fide* to one of several joint decree-holders, and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share. *Held* further that in this case the lower Court was wrong in wholly ignoring the payment certified by the decree-holder B, and that it should have determined, *first*, whether the payment to B was a fraud on the other joint decree-holders; and, *secondly*, what amount the latter were entitled to have out of the whole decree, the latter being the main question between the applicants for execution and the judgment-debtor, and as such clearly within the scope of s. 244 of the

Civil Procedure Code. *Ranee Nyna Koor v. Doolee Chund* (22 W. R. 77), *Brojeswari Chowdhranee v. Tripoora Soonderee Debi* (3 C. L. R. 513), and *Mahima Chandra Roy v. Pyari Mohan Chowdry* (2 B. L. R. Ap. 43).—*Tarruck Chander Bhuttacharjee v. Divendro Nath Sanyal*, I. L. R., 9 Cal. 831.

232. If a decree be transferred by assignment in writing, or by M.S.C.O.

Application by transferee operation of law, from the decree-holder to any of decree. other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided as follows:—

(a) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution:

(b) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

TO ENABLE the heir of a deceased person to apply, under s. 208 of Act VIII. of 1859, for the execution of a decree held by such person, a certificate under Act XXVII. of 1860 is not indispensable.—*Karam Ali* (Decree-holder), *v. Halima* and others (Judgment-debtors), I. L. R., 1 All. 686.

WHERE a decree was sent to a Court for execution, and was subsequently transferred by assignment, and the transferee applied for the execution of the decree to the Court to which the decree was sent for execution, *held* that such application should be made, not to such Court, but to the Court which passed the decree.—*Ka lir Bakhsh* (Decree-holder) *v. Alahi Bakhsh* and another (Judgment-debtors), I. L. R., 2 All. 283.

THE transferee of a decree applied, while an application by the original holder of such decree to execute it was pending, to be allowed to execute it. The Court, in accordance with Act X. of 1877, s. 232, directed notice of the transferee's application to be given to the transferor and the judgment-debtor. The transferee failed to pay the court-fee leviable for the issue of such notice, and the Court dismissed his application. The transferee subsequently made a second application to be allowed to execute the decree. *Held* that such application could not be rejected, with reference to s. 230, on the ground that due diligence had not been used on the former application to procure complete satisfaction of the decree, because such application had not been granted, and therefore the question whether "on the last preceding application" due diligence was used to procure such satisfaction did not arise.—*Sadik Ali Khan v. Muhammad Husain Khan*, I. L. R., 2 All. 384.

233. Every transferee of a decree shall hold the same subject to M.S.C.O.

Transferee to hold subject to equities enforceable against original holder. the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

234. If a judgment-debtor dies before the decree has been fully M.S.C.O.

If judgment-debtor dies before execution, application may be made against his representative. executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands, and has not been duly disposed of; and for the purpose of ascertaining such liability, the

Court executing the decree may, of its own motion, or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

WHERE an application is made and granted under s. 210, Act VIII. of 1859, and property is attached which is claimed by the heir as his self-acquired property, the Court should proceed under s. 203 without requiring any fresh application to be made under that section.—*Ram Chund Chuckerbutty* (Decree-holder) *v.* *Madhab Narain Ray* and another (Heirs of Judgment-debtor), 1 Cal. Law Rep 359.

A SUIT having been brought against the holder of an impartible zamindari upon a promissory note, a decree was passed by consent, whereby certain land was directed to be sold in the event of the debt not being paid in a certain way. After the death of the zamindar execution-proceedings were taken against his son to obtain a sale of the said land. *Held* that the decree could be executed against the son.—*Sivagiri Zamindar v. Tiruvengada*, I. L. R., 7 Mad. 339.

IN an undivided Hindú family, although the interests of the sons in the ancestral estate are liable to satisfy the father's debts, the holder of a money-decree against the father who has not attached the ancestral estate before the death of the father cannot execute the decree against the ancestral property as assets in the hands of the representatives of the judgment-debtor under s. 234 of the Code of Civil Procedure, 1877.—*Zamindar of Sivagiri v. Alwar Ayyangar* (I. L. R., 3 Mad. 42) followed.—*Karnataka Hanumantha* (Petitioner), Appellant, *v.* *Andukuri Hanumayya* and others (Respondents), I. L. R., 5 Mad. 232.

IN A SUIT by the trustees to remove the defendant from the management of certain temples, a decree for mesne-profits was passed against the defendant, who was the karnavan of a Malabar tarwad. *Held* that the tarwad property in the hands of the deceased defendant's successor was not assets of the deceased in the hands of his successor liable to satisfy the decree under s. 234. The share of a deceased father in an undivided Hindú family passes by survivorship to the sons, and is not assets in their hands to satisfy a decree against the father under s. 234.—*Ravi Varma Raja* (First Respondent), Appellant in 216 of 1881, *Narayana Bhatta* and another (Second and Third Respondents), Appellants in 206 of 1881, *v.* *Yadayil Koman* and another (Petitioners), Respondents, I. L. R., 5 Mad. 223.

A RIGHT of second appeal, where it existed prior to Act X. of 1877, now exists in the case of any proceedings in execution which were commenced prior to, and were still pending on, the 1st of October, 1877. An order was made under s. 210 of Act VIII. of 1859, making the legal representatives of a deceased judgment-debtor parties to a suit in execution of a decree obtained against the deceased in his lifetime. Subsequently the decree-holder discovered that certain property which he claimed to be the property of the deceased was in the possession of a third person, C; and he applied to have C's name put upon the record, and to be allowed to execute the decree against him. *Held* that the Court had no power to put C's name on the record.—*Syad Nadir Hussein* (Appellant) *v.* *Bissen Chand Bassarat* (Respondent), 3 Cal. Law Rep. 437.

A HINDU widow instituted a suit to recover possession of certain property belonging to her deceased husband, and that suit was dismissed with costs. The widow having died before execution for the costs was taken out, the decree-holder sought to take out execution against the next heirs of the late widow's deceased husband. *Held* that the fact that the widow did not in her suit seek to recover any interest personal to herself, but that she contracted the judgment-debt in the effort to recover a portion of her husband's estate, to which, in its entirety, the next heirs of her late husband had succeeded, was sufficient to make the whole estate liable, and would entitle the decree-holder to satisfy his decree against "the legal representatives" of the late widow's husband, under s. 234 of Act X. of 1877. In a decree against a Hindú widow, it should be stated whether the decree is a personal decree, or one against her as representing her deceased husband.—*Ramkishore Chuckerbutty v. Kallykanto Chuckerbutty*, I. L. R., 6 Cal. 479.

AS THE entire interest in an impartible zamindári passes upon the death of the father to the son, there is nothing in the estate itself which can be attached as assets of the father under a decree against him, or which can be made available in execution of the decree against his son as his representative. Though a son is bound, under Hindú law, to pay his father's just debts from any property he may possess, yet, when he is made a party to a decree as representative of his deceased father for the purpose of executing it, his liability is limited to the amount of assets of the deceased which may have come to his hands and has not been duly disposed of. An appeal lies from an *ex-parte* order directing attachment in execution of a decree.—Sangili Virapandia Chinnathambiar, Zamindar of Sivagiri (Defendant), Appellant, v. Alwar Ayyangar (Plaintiff), Respondent (in No. 389); Thambu Chinnammal Janaki (Plaintiff), Respondent (in No. 390); Minatchi Ammal (Plaintiff), Respondent (in No. 391); Muttasami Pillai (Plaintiff), Respondent (in No. 392), I. L. R., 3 Mad. 42.

235. The application for the execution of a decree shall be in writ- **M.S.C.O.**

Contents of application ing verified by the applicant or by some other person proved to the satisfaction of the Court for execution of decree. to be acquainted with the facts of the case, and shall contain, in a tabular form the following particulars (namely):—

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;
- (f) whether any and what previous applications have been made for execution of the decree and with what result;
- (g) the amount of the debt or compensation with the interest (if any) due upon the decree, or other relief granted thereby;
- (h) the amount of costs (if any) awarded;
- (i) the name of the person against whom the enforcement of the decree is sought; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

IN EXECUTION of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution, under s. 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Prinsep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—Sreenath Goocho v. Yusoo Khan, I. L. R., 7 Cal 556.

UPON an application under s. 235 of Act X. of 1877 (Civil Procedure Code) for the execution of a decree, which directed the judgment-debtor forthwith to pull down and remove such portion of a wall as had been erected by him upon the wall of the decree-holder, the mode in which the assistance of the Court was required to be given was stated in column j of such application to be by giving the decree-holder

possession of his wall by pulling down the wall erected thereon. The Court directed an order to issue to the Nazir to remove the judgment-debtor's wall from the top of the decree-holder's wall. *Held* that the decree-holder's application could not be granted in that form, and that he should have asked the assistance of the Court to be given in the way provided for by s. 260 of Act X. of 1877, by the imprisonment of the judgment-debtor or the attachment of his property or both. *Held* also that the Court was wrong in passing the order it had, but that it should have pointed out to the decree-holder the manner in which he should have asked the assistance of the Court to be given and the remedy to which he was entitled; and that, upon such amended application being made, the proper course to pursue was to serve a notice on the judgment-debtor directing him to comply with the order contained in the decree within a time to be fixed by such notice; and that, if he failed to comply with such order within the time so limited, the Court might then, at the instance of the decree-holder, make an order, either for the judgment-debtor's imprisonment, or for the attachment of his property, due regard being had to the provision of s. 260 in the latter case. *Held*, further, that the High Court, in special appeal, should not vary the order for execution which had been passed in such a way as to give the decree-holder that relief for which he did not ask.—*Protap Chunder Dass (Judgment-debtor) v. Peary Chowdhain (Decree-holder)*, I. L. R., 8 Cal. 174.

M.S.C.C.

236. Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor, but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of moveable property to be accompanied with inventory.

IN EXECUTION of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution under s. 230 would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Princep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—*Sreenath Goocho v. Yusoof Khan*, I. L. R., 7 Cal. 556.

237. Whenever an application is made for the attachment of any immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Further particulars when application is for attachment of immoveable property.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

UNDER the Civil Procedure Code (Act VIII. of 1859) an application to the Court to continue the attachment of immoveable property, but to stay the sale of it, *held* to be a proceeding to keep in force the decree.—*Nukanna v. Ramasami*, I. L. R., 2 Mad. 218.

IN EXECUTION of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor,

previous to the date on which the three years allowed for such execution, under s. 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per Princep, J*—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred—*Sreenath Goocho v Yusoo Khan I. L. R., 7 Cal. 556.*

APPLICATION was made for the attachment in execution of a decree of a muafi holding belonging to the judgment-debtor. The numbers and areas given in such application as the numbers and areas of the lands comprised in such holding were the numbers and areas of certain revenue-paying lands, and were not the numbers and areas of any lands held as muafi by the judgment-debtor. The order of attachment described the property as described in the application for attachment. The judgment-debtor having alienated by sale a muafi holding belonging to him, the decree-holders sued to have such alienation set aside as void under the provisions of s. 276 of Act X. of 1877. *Held* that, having regard to the description given in the application for attachment and the order of attachment, it could not be said that the muafi holding alienated by the judgment-debtor was under attachment at the time of the alienation, and its alienation was therefore not void under s. 276 of Act X. of 1877. *Held* also that the material misdescription of the property in this case in the order of attachment protected the alienees, who were *bona-fide* purchasers, from having the alienation set aside as void under s. 276, as the attachment could not, under the circumstances, be held to have been "duly intimated and made known" as required by that section.—*Gumani (Plaintiff) v. Hardwar Pandey and others (Defendants), I. L. R., 3 All. 698.*

238. If the property be land registered in the Collector's office, the

When application must be accompanied by extract from Collector's register. application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue, for such land, and the shares of the registered proprietors.

C.—Of staying Execution.

239. The Court to which a decree has been sent for execution M.S.C.C.

When Court may stay execution. under this chapter shall, upon sufficient cause being shewn, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto;

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

It is not open to the Court to refuse to execute a decree against which no appeal has been preferred, and the time for appealing against which has expired.—*Ishan Chunder Roy v. Ashanoollah Khan, I. L. R., 10 Cal. 817.*

WHERE a decree passed by a Court governed by the Code of Civil Procedure is sent for execution to another Court in British territory likewise governed by the Code, it is not open to the latter to refuse to execute it on the ground that the former had no jurisdiction. In case of doubt, the Court where execution is sought may adjourn the execution-proceedings in order to enable the party interested to make an application to the Court passing the decree, and thence, if necessary, to the higher Courts of the same province in their turn.—*Chogálál v. Trueman*, I. L. R., 7 Bom. 481.

WHERE a Court in one district transfers a decree for execution to a Court situated in another district, it is beyond the jurisdiction of the Court executing the decree to question the correctness or propriety of the order under which the decree was sent to such Court for execution. Where, in the opinion of the Court, sufficient cause has been shown against the execution of a decree transferred for execution, the Court executing the decree should follow the procedure prescribed by s. 239 of the Code of Civil Procedure.—*Beer Chunder Manikya (Decree-holder) v. Maymana Bibee and others (Judgment-debtors)*, I. L. R., 5 Cal. 736.

M.S.C.C.

240. Before passing an order under section 239 to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Power to require security from or impose conditions upon judgment-debtor.

M.S.C.C.

241. No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution.

Liability of judgment-debtor discharged to be retaken.

M.S.C.C.

242. Any order of the Court by which the decree was passed, or of such Court of Appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Order of Court which passed decree or of Appellate Court to be binding upon Court applied to.

M.S.C.C.

243. If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

Stay of execution pending suit between decree-holder and judgment-debtor.

A DECREE-HOLDER having attached the property of his judgment-debtor in execution, the latter applied for a stay of execution until the decision of a pending suit brought by him against the judgment-creditor. The Court allowed the application, continuing the attachment on the property, and struck the execution-case off the file. The decree-holder appealed to the High Court. *Held* that no appeal lay.—*Nihal Chand alias Chutto Lal v. Rameshari Dassee*, I. L. R., 9 Cal. 214.

D.—Questions for Court executing Decree.

M.S.C.C.

244. The following questions shall be determined by order of the Court executing a decree, and not by separate

Questions to be decided by Court executing decree. suit (namely)—

(a) questions regarding the amount of any mesne-profits as to which the decree has directed inquiry;

(b) questions regarding the amount of any mesne-profits or interest which the decree has made payable in respect of the subject-matter of

a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree ;

(c) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne-profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

AN ORDER refusing an application to execute a decree is not an adjudication within the rule of *res judicata*.—Hurrosoondary Dassee v. Juggobundhoo Dutt, I. L. R., 6 Cal. 203.

AN ORDER directing an account is not an order in the nature of a final decree, and is unappealable ; such an order merely directs certain proceedings to be taken, in order that a final decree may thereafter be made.—Sreenath Roy v. Radhanath Mookerjee, I. L. R., 9 Cal. 773.

A SUIT for the recovery of money paid to a judgment-creditor out of Court in satisfaction of a decree, but not certified, is barred by s. 244 (c) of Act X. of 1877 and by the last paragraph of s. 258 as amended by Act XII. of 1879—Pátankar (Plaintiff) v. Devji (Defendant), I. L. R., 6 Bom. 146.

WHERE an order, requiring the decree-holder to give security within three days' is made under s. 546 by the Judge of the Court in which the decree was passed, and in which the execution is pending, such order is appealable as a decree under the provisions of s. 2, and s. 244, cl. c.—Luchmeeput Singh v. Sitanath Doss, I. L. R., 8 Cal. 477.

THERE is no appeal against an order made under Act X. of 1877, s. 244, determining questions between the parties to a suit as to the amount of mesne-profits recovered by the plaintiff subsequently to the decree, and as to the amount payable on account of the costs of execution of that decree.—Dulpatbhái Bhagubhái v. Amasang Khemá Bhai, I. L. R., 2 Bom. 553. See also I. L. R., 5 Cal. 50.

THE words, "the following questions shall be determined by order of the Court executing the decree," of s. 244 of the Code of Civil Procedure, must be interpreted to mean the Court executing the decree at the time when the application is made, and that they do not include the Court which has executed the decree, and has, therefore, become *functus officio*.—Fakaruddin Mahomed Ahsan v. Official Trustee of Bengal, I. L. R., 10 Cal. 538.

MONEYS realized as due under a decree, if unduly realized, are recoverable by application to the Court executing the decree, and not by separate suit. The opinion of Stuart, C.J., in the Agra Savings' Bank v. Sri Ram Mitter (I. L. R., 1 All. 388) differed from. Haramohini Chaudharain v. Dhonmani Chaudharain (1 B. L. R., A. C., 139) and Ekauri Singh v. Baij Nath Chattapadhya (4 B. L. R., A. C., 111) distinguished.—Partab Singh (Decree-holder) v. Beni Ram (Judgment-debtor), I. L. R., 2 All. 61.

IN A suit to recover possession of land, the defendants resisted execution on the ground that they were cultivators, and that the decree only authorised the plaintiff to recover possession as proprietor. The objection was overruled, and the defendants were ejected. They then sued to set aside the order made in the execution-proceedings and to recover possession. Held that the suit was barred under s. 244, cl. c, of the Civil Procedure Code.—Najhan v. Mahomed Taki Khan *alias* Peer Bux Khan, I. L. R., 9 Cal. 872.

A JUDGMENT-DEBTOR who claims to have a sale of his land set aside on the ground of fraud committed by the judgment-creditor, who procured a sale without advertisement, and purchased the property without leave of the Court, is deburred from bringing a suit to set aside the sale, inasmuch as the question is one arising between the parties to the suit, and relates to the execution of the decree within the meaning of s. 244.—Viraraghava Ayyangar (Defendant), Appellant, v. Venkatacharyar (Plaintiff), Respondent, I. L. R., 5 Mad. 217.

A JUDGMENT-DEBTOR sued the decree-holder for recovery of possession of certain land which had been sold in execution of the decree, and to set aside the sale, on the ground that the land was not liable, under s. 9 of the N. W. P. Rent Act, to sale in execution of decree. *Held* that the question at issue between the parties was clearly one relating to the executing and satisfaction of the decree, and that the suit was therefore barred by the provisions of s. 244 of the Civil Procedure Code.—*Janki Singh v. Ablakh Singh*, I. L. R., 6 All 393.

IN 1878, a decree-holder, having received certain grain from the judgment-debtor in satisfaction of the decree, failed to certify satisfaction of the decree to the Court in accordance with the provisions of s. 258 of the Code of Civil Procedure, 1877, and executed the decree nevertheless. In a suit for damages against the decree-holder it was held that the judgment-debtor's remedy for the wrong suffered was not taken away by the provisions of ss 244 and 258 of the Code.—*Viraraghava Reddi (Plaintiff) v. Subbaka (Defendant)*, I. L. R., 5 Mad. 397.

THE holder of a decree against a firm caused certain property to be attached in execution of the decree as the property of the firm. One of the partners in the firm objected to the attachment on the ground that such property was not the property of the firm, but was his private property. The Court disallowed the objection, whereupon such partner appealed from the order disallowing the objection. *Held* that such order was not one under s. 244 (c) of Act X. of 1877, but under s. 281, and was therefore not appealable.—*Abdul Rahman v. Muhammad Yar*, I. L. R., 4 All. 190.

A DECREE-HOLDER, having assigned a share of her decree, applied several times jointly with such assignee for execution. On a subsequent application made by the original decree-holder alone, the Court, while granting the application, directed that the proceeds arising from such execution should only be paid over to the co-decree-holders jointly. *Held* that the question in dispute being one between co-decree-holders, and not between parties to the suit or their representatives, as contemplated by Act X. of 1877, s. 244, art. c, no appeal would lie from such order.—*Gyamonee v. Radha Romon*, I. L. R., 5 Cal 592.

AN ORDER for attachment and sale of property in execution of a decree is an order "of the same nature with" an order made in the course of a suit for attachment of the debtor's property. The latter order is appealable under s. 588, cl. 7, of the Code of Civil Procedure. It follows that an order for attachment and sale in execution of a decree is (according to the requirement of s. 588, cl. 7) "of the same nature with appealable orders made in the course of a suit," and therefore is appealable under that section.—*Polokdhari Rai and others (Judgment-debtors) v. Radha Persad Singh (Decree-holders)*, I. L. R., 8 Cal. 28.

AN ORDER passed on appeal by a High Court determining a question mentioned in s. 244 of Act X. of 1877 is a final "decree" within the meaning of s. 595 of that Act. *Held*, therefore, where such an order involved a claim or question relating to property of the value of upwards of ten thousand rupees, and reversed the decisions of the lower Courts, that notwithstanding the value of the subject-matter of the suit in which the decree was made in the Court of first instance was less than that amount, such order was appealable to Her Majesty in Council.—*Ram Kirpal Shukul (Appellant) v. Rup Kuar (Respondent)*, I. L. R., 3 All. 633.

WHERE an application was made for the issue of execution of decree, and the District Munsif made an order refusing execution, the decree being one passed not in a regular suit, and governed by the one-year limitation, and the Subordinate Judge on appeal reversed the Munsif's order, applying the three years' limitation, *held* by the High Court that, as Act X. of 1877, s. 588, provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay, and that the High Court could not interfere under s. 622, as the Subordinate Judge has jurisdiction to hear the appeal.—*Suryaprakasa Rau v. Vaisya Sanniási Rau*, I. L. R., 1 Mad 401.

WHERE a decree-holder, declared to be entitled to possession of certain lands, subsequent to decree executed a patta in favour of his judgment-debtor, who was then in possession, and afterwards took out execution under his decree, *held* (on an objection by the judgment-debtor that, under these circumstances, he was entitled

to possession) that satisfaction of the decree not having been entered up, such objection could not be dealt with under s. 244 of the Civil Procedure Code. *Held* also that s. 258 of the Civil Procedure Code deals with the adjustment of any decree, and not merely with the adjustment of a money-decree.—*Baba Mohamed v. Webb*, I. L. R., 6 Cal. 786.

WHERE a plaintiff, in bringing a suit for possession and for mesne-profits, approximately estimates the amount of such mesne-profits at a certain sum, and obtains a decree which leaves the amount due as mesne-profits to be ascertained in execution, he is not bound down to the amount claimed in his plaint, but if more is found due to him, he is entitled, on payment of further court-fees, to recover the larger amount so found due. *Baboojan Jha v. Byjnath Dutt Jha* (I. L. R., 6 Cal. 474) distinguished. A Court, in execution-proceedings, cannot look behind the decree when the decree does not limit the amount of *wasilat* to be awarded.—*Jadoomony Dabee v. Hafez Mahomed Ali Khan*, I. L. R., 8 Cal 295.

By a decree in an administration-suit, A was appointed Receiver "to manage the estate." A died, and by a subsequent order B was appointed Receiver. One of the defendants in the suit applied to have B removed from the office of Receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibai (Plaintiff) v. Limiji Nowroji Banaji and others (Defendants)*; *Harrivallabhdas Calliandás (Original Defendant), Appellant, v. Ardasar Framji Moos (Receiver and Respondent)*, I. L. R., 5 Bom. 45.

A DECREE enforcing a first mortgage of certain property not being satisfied, the property was sold in execution of a decree of a later date enforcing a second mortgage of the property. *Per Stuart, C.J.*—That the decree enforcing the first mortgage could not be executed against the property, but the holder of such decree was bound to bring a fresh suit against the purchaser of the property to enforce his decree. *Per Straight, Brodhurst, and Tyrrell, JJ.*—That a fresh suit was the most convenient and expeditious remedy. *Per Oldfield, J.*—That the purchaser not being the "representative" of the judgment-debtor within the meaning of s. 244 (c) of the Civil Procedure Code, the holder of such decree must bring a fresh suit to enforce it.—*Jagat Narain v. Jag Rup*, I. L. R., 5 All. 452.

THE power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under s. 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between the judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant.—*Govinda Nair (Petitioner) v. Késava (Counter-Petitioner)*, I. L. R., 3 Mad. 84.

WHERE the plaintiff in a suit prays that a person may be substituted on the record as the heir of a defendant who has died, the Judge should raise an issue as to whether the person sought to be substituted is the heir of the deceased defendant. In 1872, A brought a suit on a mortgage against the mortgagor, a Hindú widow, who died pending the suit. A then applied that the suit should be revived against B as the representative of the defendant. B denied that he was such representative, but the Judge refused to go into the question, made B a party, and gave A a decree for the sale of the mortgaged property. B subsequently brought a suit to have it declared, *inter alia*, that the mortgage and decree only covered the widow's life-interest. *Held* that the suit was not barred either as *res judicata*, or under the provisions of s. 244 of the Code of Civil Procedure.—*Kanai Lal Khan v. Sashi Bhusan Biswas*, I. L. R., 6 Cal. 777.

AN ORDER under s. 243 of the Civil Procedure Code staying execution of a mortgage decree obtained against the representatives in title of the mortgagor, on the ground that, owing to disputes among such representatives as to their respective

shares in the property left by the mortgagor, an administration-suit had been instituted and was pending, comes within cl c of s. 244, inasmuch as the question raised thereby is a question arising between the parties to the suit in which the decree was passed and relating to the execution of the decree, and is therefore appealable. Where such an order was made, it was *held*, on appeal, that it was illegal, in so much that it prevented a secured creditor from availing himself of the benefit of his security by realizing the property specifically hypothecated by the mortgage.—*Krishna Mohinee Dossee (Appellant) v. Shyama Charan Nag and others (Respondents)*, 9 Cal. Law Rep. 344.

A SUIT for money having been brought against the holder of an impartible zamindári, a decree was passed in 1867 by consent to the effect that the zamindár undertook to pay a certain sum by yearly instalments and hypothecated certain land as security. A memorandum of this decree was registered under s. 42 of Act XX. of 1866. The last instalment fell due in February, 1870. The decree was kept alive against the zamindár up to his death in 1873. Upon the death of the zamindár, proceedings in execution were taken against his son, who succeeded to the zamindári, but were set aside on appeal. In January, 1882, a suit was brought against the son to recover the amount of the last instalment due by his father under the decree of 1867. *Held* that the suit was neither barred by the provisions of s. 244 of the Code of Civil Procedure, nor by limitation.—*Arunáchala v. Zamindár of Sivagiri*, I. L. R., 7 Mad. 328.

In 1875 a decree was passed against N as representative of L, who died pending the suit, declaring N liable to the extent of the assets of L which might have come to the hands of N. In 1879 the decree-holder applied for execution of the decree, and, without proof that any of the assets of L had come to the hands of N, obtained an order, and attached lands belonging to N. N objected to the attachment, but the Munsif, without investigation, rejected his claim, and directed N to bring a regular suit. The land was sold and purchased by A B. N, after an abortive attempt to obtain a review of the Munsif's order from his successor, brought a suit in 1880 against the decree holder and A B to recover the land. *Held* that as N was a party to the former suit within the meaning of s. 244 of the Civil Procedure Code, 1877, the suit would not lie.—*Arundadhi Amnyar and another (Defendants), Appellants, v. Natesha Ayyar (Plaintiff)*, Respondent, I. L. R., 5 Mad. 391.

ON APPEAL from an order allowing an application by the legal representative of a deceased decree-holder for execution, the Appellate Court, holding that the applicant must obtain a certificate under Act XXVII. of 1860 before he could take out execution of the decree, made an order directing that execution of the decree should be stayed until the applicant had obtained such certificate. *Held* that such order fell under s. 244 of the Civil Procedure Code, and was therefore appealable. Also, following the principle enunciated in *Lachnin v. Ganga Prasad* (I. L. R., 4 All. 485), that the possession of a certificate under Act XXVII. of 1860 was not "an imperative condition precedent to the institution" of execution-proceedings by the representative of a deceased decree-holder; but that, where the judgment-debtor objects to the title of the person claiming to execute the decree, the Court should consider whether the objection is vexatiously raised or is a *bona fide* one.—*Hoti Lal v. Hardeo*, I. L. R., 5 All. 212.

A SUIT will not lie upon a decree the execution of which is barred by the provisions of the Limitation Act. A suit may be brought in the High Court of Bombay upon a judgment obtained in the Court of Small Causes of Bombay. The execution of the decrees in such suits is rigorously confined to immoveable estates. The ground of the interference of the High Court in such cases is that, practically, the judgment-creditor could not recover his debt except by process against the immoveable estate of the debtor. In such cases the plaint must contain an averment, and the plaintiff must establish to the satisfaction of the High Court, that there is not any sufficient moveable property of the defendant against which the decree of the Court of Small Causes can be fully executed, and that he has immoveable property situated within the original jurisdiction of the High Court against which execution can be had. *Moonshi Golam Arab v. Curreen Bux Shaikji* (I. L. R., 5 Cal. 294) referred to.—*Fakirapa (Plaintiff) v. Pandurangapa (Defendant)*, I. L. R., 6 Bom. 7.

M, who held a decree against S for possession of certain immoveable property and costs, assigned such decree to S by way of sale, agreeing to deliver the same to him on payment of the balance of the purchase-money. He subsequently applied for execution of the decree against S, claiming the costs which it awarded. S thereupon paid the amount of such costs into Court, and, having obtained stay of execution, sued M for such decree, claiming by virtue of such assignment. The lower Court held that the suit was barred by the provisions of s 244 of Act X. of 1877, and also, treating such assignment as an uncertified adjustment of such decree, that it was barred by the terms of the last paragraph of s. 258 of that Act. *Held* that the suit was not barred by anything in either of those sections. The words "any Court" in the last paragraph of s. 258 refer to proceedings in execution and to the Court or Courts executing a decree.—*Sita Ram and another (Plaintiff) v. Mahipal and another (Defendants)*, I. L. R., 3 All. 533.

S, ALLEGING that a money-decree against him held by G had been adjusted out of Court by a payment in cash and the delivery of certain property, and that M had, notwithstanding such adjustment, applied for execution of such decree, and recovered the amount thereof, as the Court executing such decree had refused to determine whether it had been satisfied on the ground that such adjustment had not been certified, sued M for the money which he had paid him out of Court. *Held* that the suit was not barred by the provisions of s. 244 of Act X. of 1877 or of s 258 of that Act. The last paragraph of s. 258 means that the Court executing the decree shall not recognize an uncertified payment or adjustment out of Court. It does not prohibit a suit for money paid to a decree-holder out of Court, and the payment of which, not being certified, could not be recognized, and which the decree-holder had not returned, but had misappropriated by taking out execution of the decree a second time, and securing the amount in full through the Court.—*Shadi and another (Plaintiffs) v. Gangu Sahai (Defendant)*, I. L. R., 3 All. 538.

S MORTGAGED four parcels of land to M. M obtained a decree against S directing the sale of the lands mortgaged. S died, and K was brought in as his representative under s. 234 of the Code of Civil Procedure. M applied for execution against the lands mortgaged as assets of S. K objected to the sale of three parcels, on the ground that one parcel belonged to himself (K), and two to the family to which S belonged, and of which K was the manager. The District Munsif investigated these questions under s. 244 of the Code of Civil Procedure, and directed that execution should proceed against all four parcels. The District Court on appeal reversed the order of the Munsif on the ground that he had no power to decide these questions under s. 244, and that the proper course was for M to attach the properties and for K to make a claim. This course was adopted, and K's claim was rejected, and the four parcels were sold and bought by V. K thereupon brought a suit against M and V to cancel the sales to V. *Held* that, by virtue of s 244 of the Code of Civil Procedure, the suit would not lie.—*Kuriyali v. Mayan*, I. L. R., 7 Mad. 255.

A JUDGMENT-DEBTOR, alleging that his right as occupancy-tenant of certain land had been sold in execution of the decree, sued the decree-holder and the auction-purchaser to set aside the sale as illegal under s. 9 of the N.-W. P. Rent Act. The Court of first instance decreed the claim, and ordered the defendant-decree-holder to refund the purchase-money. *Held* that, as between the defendant-decree-holder and the plaintiff, the question at issue was one arising between the parties to the suit in which the decree was passed and relating to the execution, discharge, or satisfaction of the decree, and was therefore, under s. 244 of the Civil Procedure Code, to be determined by the Court executing the decree, and not by separate suit. *Janki Singh v. Ablakh Singh* (I. L. R., 6 All. 393) followed. *Held* also that, apart from this consideration, it was beyond the lower Court's powers to make an order directing the decree-holder to refund the purchase-money, that being a matter between two co-defendants which was not raised, and could not be decided, in the present suit.—*Ram Gopal v. Khiali Ram*, I. L. R., 6 All. 448.

A SUBORDINATE Judge admitted a plaint in *forma pauperis*, but, holding that he had no jurisdiction to try the suit, returned the plaint to the plaintiff for its presentation in the proper Court, and ordered each party to pay his own costs. After the presentation of the plaint in another Court, and before the termination of the

suit, the Collector applied to the Subordinate Judge for execution of the order as to costs, by seeking to recover the amount of the stamp-duty from the plaintiff. The Subordinate Judge refused to execute the order, on the ground that the pauper-suit was still pending in another Court. His order was affirmed by the District Judge in appeal. On second appeal to the High Court, *held* that there was no appeal, and, therefore, no second appeal, under s. 244, cl. c, of the Civil Procedure Code (Act X. of 1877), against the order of the Subordinate Judge refusing execution of the order as to costs, inasmuch as the question was not between the parties to the suit. *Held* further that, under s. 412 of Act X. of 1877, the Subordinate Judge had no jurisdiction to make the order for payment of court-fees by the plaintiff. The High Court accordingly, in the exercise of their extraordinary jurisdiction, annulled the Subordinate Judge's order about costs, and all the subsequent proceedings consequent upon that order.—Collector of Ratnagiri v. Janardan Vithal Kamata, I. L. R., 6 Bom. 590.

CERTAIN persons, claiming by right of inheritance to C, sued B, N, A, K, and others for possession of certain immoveable property, and obtained a decree, dated in August, 1876, for possession of the same. In the course of the litigation which ended in that decree, Z purchased certain immoveable property from B, N, A, and K. Z was subsequently dispossessed of such property in execution of the decree of August, 1876. He thereupon sued the holders of that decree for possession of the same, alleging that his vendors had inherited the same from D, that it was not affected by that decree, and that he had been improperly dispossessed of it in execution of that decree. *Held* by the Court that, the plaintiff not being the representative of any of the parties to the suit in which that decree was passed, in the sense of s. 244 of the Civil Procedure Code, but being, if his allegations were true, a purchaser from certain of the judgment-debtors of property not affected by that decree, the suit was not barred by the provisions of that section—Partab Singh v. Beni Ram (I. L. R., 2 All. 61) distinguished. Observations by Stuart, C.J., on his judgment in The Agra Savings' Bank v. Sri Ram Mitter (I. L. R., 1 All. 388) and on the judgment of the Full Bench in Partab Singh v. Beni Ram (I. L. R., 2 All. 61) referring to that judgment.—Zauki Lal v. Jawahir Singh, I. L. R., 5 All. 94.

IN EXECUTION of a decree on a mortgage-bond executed by the father of the judgment-debtors, since deceased, which decree directed that the mortgage-lien should be enforced—*first*, by sale of the property specially mortgaged; and, *secondly*, if the debt remained unsatisfied, by the sale of the other property in the possession of the judgment-debtors—the judgment-creditors proceeded to have the mortgaged property sold. After the issue of the sale-notification, and three days prior to the date fixed for the sale, one of the judgment-debtors applied to have the sale stayed, on the ground that an administration-suit was pending with respect to the property of his father, the mortgagor, and also asked that a receiver might be appointed and arrangements made for the purpose of paying off the mortgage-debt and saving the property from being sold. On this application the Court passed an order staying the sale. *Held* that such order was appealable, being a question arising between the parties to the suit in which the decree was passed, and relating to the execution of that decree, and as such coming within the provision of cl. c, s. 244, Act X. of 1877 (Civil Procedure Code). *Held* also that the Court was wrong in passing such order, inasmuch as there were no reasonable grounds why a secured creditor should be debarred from enforcing his security pending the administration-suit.—Kristomohini Dossee v. Bama Churn Nag Chowdry, I. L. R., 7 Cal. 733.

ONE Khelut Chunder was entitled to a share in Pargana Alumpore; before he obtained possession, Government revenue on the whole estate fell due. Khelut failed to pay his sharer, and his co-sharer, Kaminee, to save the estate, paid the whole sum due, and subsequently sued Khelut for the amount, eventually obtaining a decree. Subsequently this decree became vested in one Rutnessur, and the Pargana Alumpore came into the possession of Kaliprosono Ghose. Rutnessur obtained an order for execution against the property of Khelut, and, having transferred his decree to the High Court, proceeded to enforce the decree against Krishto Mohinee, the widow of Khelut, and her son, by attaching the family dwelling-house in Calcutta. The widow and son then brought this suit against Kaliprosono to have the share of Khelut in Alumpore ascertained, and praying for a decree calling upon Kaliprosono to pay the

amount of the value of the share of Alumpore in satisfaction of Rutnessur's decree. *Held* that the suit could not be maintained so far as it attempted to make the decree a charge against Alumpore. Questions as to part-satisfaction of a decree cannot, according to cl. c, s. 244 of Act X. of 1877, be raised in a separate suit. That section alludes to parties to the decree or their representatives; but it is not on that account open to a plaintiff to evade the section by adding an unnecessary party to the suit. *Held* on appeal that the suit was rightly dismissed; that, as far as Rutnessur was concerned, it had already been decided that Rutnessur was entitled, if he so chose, to execute his decree against the Calcutta property; and that, therefore, that question was *res judicata*; and that, as regards the plaintiff's claim, that the patni given by Kaliprosono to Hurry Churn should be treated as part-payment to Rutnessur, such a question could only be decided in execution-proceedings. That the mere existence of the agreement between Kaliprosono, Rutnessur, and Hurry Churn, did not entitle the plaintiff to join them as co-defendants in the suit. That, as far as Kaliprosono was concerned, the suit brought against him could only be treated as a suit to establish a charge or lien on land out of Calcutta, and therefore the Court had no jurisdiction to try it.—*Kisto Mohinee Dossee and others v. Kaliprosono Ghose and others*, I. L. R., 8 Cal 402.

ON AN application for execution for the full amount due under a decree by some of several joint decree-holders, the judgment-debtor objected to execution being granted for the full amount of the decree on the ground that he had already paid off a large portion of the money due under the decree to B, one of the joint decree-holders. The payment was made out of Court, but B, who claimed to be entitled to a $12\frac{1}{2}$ annas share in the decree, certified the payment in the manner prescribed by s. 258 of the Civil Procedure Code (Act XIV. of 1882), and represented that his claim had been satisfied in full. The other joint decree-holders denied B's right to the $12\frac{1}{2}$ annas share claimed by him, and refused to recognise the payment said to have been made to him. The lower Court disallowed the objection, and granted execution for the full amount of the decree. *Held* that, regard being had to the provisions of the General Clauses' Act (I. of 1868), the word "decree holder" in s. 258 of Act XIV. of 1882 should be read in the plural, and looking at the provisions of s. 231 of the later Act, the Court ought not to recognise payments made out of Court, unless made and certified for the benefit of all the joint decree holders of any portion of the decree in excess of that to which the decree-holder so paid is undisputedly entitled. *Held* also that a judgment-debtor is entitled to credit for any sum paid *bond fide* to one of several joint decree-holders, and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share. *Held* further that in this case the lower Court was wrong in wholly ignoring the payment certified by the decree-holder B, and that it should have determined, *first*, whether the payment to B was a fraud on the other joint decree holders; and, *secondly*, what amount the latter were entitled to have out of the whole decree, the latter being the main question between the applicants for execution and the judgment-debtor, and as such clearly within the scope of s. 244 of the Civil Procedure Code. *Ranee Nyva Koor v. Doolee Chund* (22 W. R. 77); *Prasanna Chowdhance v. Tripoora Soondere Debi* (3 C. L. R. 513); and *Mahima Chandra Roy v. Pyari Mohan Chowdhry* (2 B. L. R., Ap. 43).—*Turuck Chunder Bhuttacharjee v. Divendro Nath Sanyal*, 9 Cal. 831.

E.—Of the Mode of executing Decrees.

245. The Court, on receiving an application for the execution of a M.S.C.O.

decree, shall ascertain whether such of the requirements of sections 235, 236, 237, and 238 as may be applicable to the case, have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

ON THE 9th of April, 1880, A applied for execution of a decree, which he had obtained against B. On the 20th of April, 1880, the Judge of the Court, under the provisions of s. 245 of the Code of Civil Procedure, ordered the application to be amended within seven days. This order was disobeyed, but no order rejecting the application was asked for or passed. On the 11th of May, 1880, the applicant prayed leave to make the amendment, which prayer was granted. *Held* that the order of the 11th of May, 1880, granting leave to amend, was not *ultra vires* of the Judge, under the provisions of s. 245 of the Code of Civil Procedure.—Kaminy Mohun Somoddar v. Gopal and another, I. L. R., 8 Cal. 479.

M.S.C.C.

246. If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall

Cross-decrees.

be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

Explanation II.—This section applies where either party is an assignee of one of the decrees, and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation III.—This section does not apply, unless the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other, and each party fills the same character in both suits; and

the sums due under the decrees are definite.

Illustrations.

(a.) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(b.) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(c.) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

A JUDGMENT-DEBTOR may set-off against the amount of the decree against him the amount of a decree which he has obtained against the decree-holder and other persons.—Harry Doyal Guho v. Din Doyal Guho, I. L. R., 9 Cal. 479.

S AND two other persons hold a decree for costs against M which did not specify the separate interests of each in the decree, and M held a decree for money against S alone, which he wished to treat as a cross-decree under Act X. of 1877, s. 246. *Held* that the decree held by S and the other persons was not a decree between the same parties as the parties to the decree held by M, and that his decree could not be treated as a cross-decree under that section.—*Munli Dhur v. Parsotam Das*, I. L. R., 2 All. 91.

S. 246 of the Civil Procedure Code is applicable to cross-decrees, and not to cross-claims under one decree. To make s. 247 of the Code applicable in the case of cross-claims under one decree, the parties entitled thereunder to recover from each other must hold the same character and possess identical rights of enforcing execution, and enforcement of the decree can only be refused, or satisfaction entered up, when this is the case. *Held*, therefore, where a decree for money of a Court of first instance directed that the money should be realisable from certain specific property of the defendant, and exempted his person and other property, and the lower Appellate Court modified this decree by extending it to the person of the defendant, and in second appeal the High Court set aside the lower Appellate Court's decree, and restored that of the first Court, directing that the costs of the defendant in the lower Appellate Court and in the High Court should be paid by the plaintiff, that, inasmuch as the plaintiff was only entitled to recover the judgment-debt due to him from the defendant from such specific property, whereas the defendant was entitled to recover the judgment-debt due to him from the plaintiff from his person and property, the provisions of s. 247 were not applicable.—*Kalka Piasad v. Ram Din*, I. L. R., 5 All. 272.

IN April, 1877, M sued S for money, and on the 10th May, 1877, S sued M for money, both suits being instituted in the same Court. In the meantime, on the 9th May, 1877, B applied for the attachment of the money claimed by M in his suit, and obtained an order prohibiting M from receiving, and S from paying, any sum which might be found in that suit to be due by S to M. On the 23rd June, 1877, M obtained a decree in his suit against S, and S obtained a decree in his suit against M, S's decree being for the larger sum. On the same day, under the provisions of s. 209 of Act VIII. of 1859, satisfaction for the smaller sum was entered on both decrees, and execution taken out of S's decree for so much as remained due. At the same time S objected to B's attachment, but his objection was disallowed. *Held*, in a suit by S against B to have the order disallowing his objection set aside, and the propriety and legality of the set-off above-mentioned established, regard being had to the provisions of s. 209 of Act VIII. of 1859, that the attaching order of the 9th May could have no operation or effect, and that, even if B had followed up that order, and attached M's decree against S, that step would not have put him in a better position, for the same section being followed, and the decrees being essentially cross-decrees, that for the smaller sum became absorbed in the one for the larger, and attachment could not affect it.—*Bujhwan Lall (Defendant) v. Sukhraj Roy (Plaintiff)*, I. L. R., 2 All. 866.

247. When two parties are entitled under the same decree to M.S.C.O.

Cross-claims under same decree. recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

248. The Court shall issue a notice to the party against whom M.S.C.O.

Notice to show cause why decree should not be executed. execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him,

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made:

Proviso.

Provided that no such notice shall be necessary

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

Explanation.—In this section the phrase “the Court” means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

WHERE an application to execute a decree of 1862 was made under s. 230 of the Code of Civil Procedure, 1877, on the 14th of December, 1877, and a notice was issued to the judgment-debtor under s. 248, but no further steps were taken, *held* that a subsequent application, made within three years from that date, was not affected by the twelve years' rule, as the last preceding application had not been granted within the meaning of s. 230.—*Chengaya v. Appasami*, I. L. R., 6 Mad. 172.

THE omission to give the notice required by s. 248 of Act X. of 1877 to the judgment-debtor on application for the execution of the decree affects the regularity of the sale which subsequently takes place in execution of the decree, and the validity of the entire execution-proceedings. *Ramessuri Dassie v. Doorgadass Chatterjee* (I. L. R., 6 Cal. 103) followed. *Held*, therefore, where execution of a decree was applied for against the legal representative of a deceased judgment-debtor, and the notice required by s. 248 of Act X. of 1877 was not given to such legal representative, and certain immoveable property belonging to the deceased judgment-debtor was sold, that such sale had been properly set aside by the Court executing the decree by reason of such omission. *Quere*—Whether such omission was an irregularity in “publishing or conducting” the sale within the meaning of s. 311 of that Act.—*Imamun-nissa Bibi* (Auction-purchaser) *v. Liaket Hussain and others* (Judgment-debtors), I. L. R., 3 All. 424.

THE plaintiff obtained a decree in 1864. The first application for execution was made in September, 1869, under s. 216 of the Civil Procedure Code (Act VIII. of 1859); and after notice to the defendant as provided thereby, an order was made under that section for execution to issue. In September, 1880, an application for execution was made under s. 230 of the Civil Procedure Code of 1877, which repealed Act VIII. of 1859. *Held* that the order after notice had the effect of reviving the decree within the meaning of art. 180, sch. ii., Act XV. of 1877, and therefore the decree was not barred by the law of limitation. An order for execution under the Code, made after notice to show cause, has, on the original side of the Court, the same effect as an award of execution in pursuance of a writ of *scire facias* had under the procedure of the Supreme Court—i.e., it creates revivor of the decree. The clause of s. 230 of Act X. of 1877, which prohibits a subsequent application for execution, only applies where the previous application has been made under that section, and not where such previous application has been made under Act VIII. of 1859.—*Ashootosh Dutt v. Doorga Churn Chatterjee*, I. L. R., 6 Cal. 504.

WHEN a judgment-debtor has died after decree, but before application has been made to execute the decree, the Court, before directing the attachment and sale of any property to proceed, must issue a notice to the party against whom the execution is applied for, to show cause why the decree should not be executed against him, and its omission to do so will invalidate the entire subsequent proceedings. A judgment having been obtained by A against B, and B having died before application was made for execution, A applied for execution of his decree upon a tabular statement, in which the judgment-debtor was stated to be C, widow of B, and C was also described as the person against whom execution was sought. Upon this application, the property mentioned in the tabular statement was directed to be attached and sold, and it was accordingly sold in execution, and purchased by A. No notice under s. 248 of the Civil Procedure Code had been served upon C before issue of execution. *Held* that the application was improper; that the order for attachment and sale should not have been made; and that the Court which made it should have set the execution aside as soon as it became aware that no notice had issued previous to its issue. The fact of there being no section in the Code expressly authorizing a Court to set aside its proceedings is immaterial, as every Court has an inherent right to see that its process is not abused or does not irregularly issue, and may set aside all irregular proceedings as a matter of course, provided that the interests of third parties are not affected. *Semble*.—Under s. 248, the fact that application to execute the decree had been made in the lifetime of B would make no difference, unless an order had been made and the property actually attached under it; as whenever an application is made for execution against a legal representative of the judgment-debtor, the notice required by the section must be issued to him, unless the Court has already ordered execution to issue against him upon a previous application.—In the matter of the Petition of Ramessuri Dassee: Ramessuri Dassee (Representative of Judgment-debtor) v. Dooiga Dass Chatterjee (Execution-creditor), I. L. R., 6 Cal. 103.

249. If the person to whom notice is issued under the last pre-M.S.C.O.

Procedure after issue of notice. ceding section does not appear, or does not shew cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection, and pass such order as it thinks fit.

250. When the preliminary measures (if any) required by the M.S.C.O.

Warrant when to issue. foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree.

IN A SUIT for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found liable to render such account for a certain period, the Court should make an interlocutory decree declaring that he is so liable, and direct him to file an account in Court within a fixed period. This decree may be enforced under s. 260 of the Civil Procedure Code. After an account has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by ss. 394 and 395 and form 157 of sch. iv. to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree should be for the payment of this amount, and also, if necessary, for the delivery of any papers, vouchers, or other documents which have come into the hands of the agent in the course of his employment. In a suit for an account against A and B as agents, the plaintiff asked for an account as against A from 1265 (1858) to 1283 (1876), and as against B from 1281 (1874) to 1283 (1876). *Held* that there had been no misjoinder. The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given is not a period to which the provisions of paragraph 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion to extend the period. Forms of keeping accounts of joint property in the mufassal considered.—*Degamber Mouzumdar v. Kallynath Roy*, I. L. R., 7 Cal. 654.

M.S.C.C. 251. Such warrant shall be dated the day on which it is issued, Date, signature, seal, and signed by the Judge or such officer as the Court delivery. appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

M.S.C.C. 252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property:

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

A PLAINTIFF is entitled to sue the legal representative of his deceased debtor, and to obtain a decree against him, without proving that assets have come into his hands. It is sufficient if there are assets of which he may become possessed. The decree should mention that it is against the defendant in that character, and should be executed as directed by s. 252 of the Civil Procedure Code, Act XIV. of 1882. *Ráyappa Chetti v. Ali Saheb* (2 Mad. H. C. Rep. 336) followed.—*Girdharlál v. Báí Shuv, I. L. R., 8 Bom. 309*

A, a Muhammadan, died possessed of immoveable property, and leaving a widow, a daughter, and a sister, B, his heiresses according to Muhammadan law. B was entitled to a one-sixth share of an undivided moiety of a certain portion of the property which was situated in Calcutta. After A's death, the L Bank sued his daughter and her husband and two of her husband's brothers in a Mufassal Court to realize certain mortgage-securities executed by A to the Bank, and obtained a decree by consent. Neither the widow, nor B, who was then absent from the country, were parties to this suit. The Bank, in execution of their decree, caused certain property of A, including the undivided moiety of the Calcutta property, to be sold by the Sheriff of Calcutta. The defendant became the purchaser at this sale, and obtained possession of the property. The certificate of sale stated that what was sold was "the right, title, and interest of A, deceased, the ancestor, and of the defendants (naming them), the representatives, in a moiety of a piece of land situated." &c. B afterwards sold and assigned her share in (among other properties) the above-mentioned undivided moiety of the Calcutta property to the plaintiff, who now sued the purchaser at the execution-sale to recover the subject of his purchase. *Held* by Garth, C.J., Kemp and Jackson, JJ. (Markby and Ainslie JJ., dissenting), that the decree and the execution founded upon it did not affect the share of B in the estate of A, and consequently that the property in question did not pass to the defendant under the sale made by the Sheriff. *Per* Garth, C.J.—A decree by consent against one heir of a deceased debtor cannot, under the Muhammadan law, legally bind the other heirs. *Per* Markby, J.—Under the Muhammadan law, the estate of an intestate descends entire, together with all the debts due from and owing to the deceased. The creditor of an intestate Muhammadan must enforce his claim against the estate in a suit properly framed for the purpose. Such a suit is properly framed if all the persons in possession of that particular portion of the estate which it is intended to charge are made parties to it. The right of a Muhammadan heir claiming the property of his deceased ancestor who died indebted is a right of representation only, and except as representative he has no right to the property whatsoever. A person may be a representative within the meaning of s. 203 of Act VIII. of 1859.

(corresponding with s. 252 of Act X. of 1877), so as to make the decree effectual for the purpose therein stated, although that person is not the heir.—*Assamathem Nesa Bibi, widow of Meer Asraff Ali (Defendant), v. Roy Lutchmeeput Singh (Plaintiff)*. I. L. R., 4 Cal. 142.

253. Whenever a person has, before the passing of a decree in an M.S.C.C.

original suit, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant:

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

In 1874 the execution of the decree of an Appellate Court was stayed pending an application for review of judgment, upon the judgment-debtor giving security for the execution of the decree, and a surety was accepted on his behalf. *Held* that the judgment-creditor could not proceed summarily against the surety under the provisions of s. 253 of the Code of Civil Procedure, 1882.—*Báláji v. Rámásami*, I. L. R., 7 Mad. 284.

AN APPEAL was preferred to the Privy Council from a final decree passed upon appeal by the High Court, and B and certain other persons on behalf of the appellant gave security for the costs of the respondent. The Privy Council dismissed the appeal, and ordered the appellant to pay the costs of the respondent. The respondent applied to the Court of first instance for the execution of that order against B and the other persons as sureties. *Held* that under Act X. of 1877, ss. 610 and 253, such order could be executed against the sureties.—*Bans Bahadur Singh v. Mughla Begam*, I. L. R., 2 All. 604 (F.B.).

In consideration of the plaintiffs being allowed to proceed with the execution of a decree which they had obtained in the High Court, A became surety upon a bond for the payment of what might be due to the defendants by such plaintiffs in the event of their decree being reversed or modified by the Privy Council, to which an appeal was then pending. *Held* that the summary procedure under s. 204 of Act VIII. of 1859 might be enforced against A as such surety. Compare Act X. of 1877, s. 253.—*Chunder Kant Mookerjee (Opposite Party), Appellant, v. Ram Kumar Coondoo and others (Petitioners)*, Respondents, 3 Cal. Law Rep. 505.

A JUDGMENT-DEBTOR, whose property was about to be sold, appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond, in which such surety promised to pay the amount of the decree within one year, if the judgment-debtor did not do so. Such officer thereupon applied to the District Judge to postpone the sale, stating that such surety was willing to pay the amount of the decree by instalments within one year, and forwarding such bond. The District Judge ordered the sale to be postponed, and the papers to be sent to the Munsif who had made the decree and ordered the sale of the property. The Munsif made no order regarding the security, but merely made an order that the amount of the decree should be paid by instalments within one year. The judgment-debtor did not pay the amount of the decree within the time fixed, and the decree-holder therefore applied for execution of the decree against such surety. *Held* that, inasmuch as the decree-holder had not been a party to the proceedings of the sale-officer or of the District Judge, and as the parties had not appeared before the Munsif, and as such surety had not agreed to pay the amount of the decree by instalments, the provisions of s. 210 of Act X. of 1877 were not applicable, and such surety had not become a party to the decree as altered by the Munsif; that such surety had not made himself a party to the decree by promising to pay its amount within one year; and that therefore his liability was not one which could be enforced in execution of the decree under s. 253 of Act X. of 1877.—*Chandan Kuar (Surety) v. Tirkha Ram (Decree-holder)*, I. L. R., 3 All. 809.

- M.S.C.C. 254. Every decree or order directing a party to pay money as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

A REGULARLY perfected attachment is an essential preliminary to sales in execution of simple decrees for money, and where there has been no such attachment any sale that may have taken place is not simply voidable, but "*de facto*" void.—*Mahadeo Dubey v. Bhola Nath Dichit*, I. L. R., 5 All. 86.

A SUIT on a bond in which immoveable property was hypothecated was adjusted by the defendant agreeing to pay the amount claimed and costs, with interest, by instalments within a fixed time, and that, in the event of default, the plaintiff should be at liberty to bring such property to sale. The Court made a decree ordering the defendant to pay the plaintiff the amount claimed and costs, with interest, "in accordance with" such agreement. *Held* (Turner, J., and Oldfield, J., dissenting) that such decree was a mere money-decree, and not one which gave the plaintiff a lien on such property.—*Janki Prasad (Plaintiff) v. Baldeo Narain and others (Defendants)*, I. L. R., 3 All. 216 (F. B.).

- M.S.C.C. 255. If the decree be for mesne-profits or any other matter, the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money.

WHEN, in a suit for possession of land and mesne-profits at a rate stated in the plaint, a decree is passed which directs that the amount of mesne-profits be ascertained in execution of the decree, the plaintiff is not limited to the amount or rate stated in his plaint, though it may be used as evidence against him in favour of the defendant. *Baboojan Jha v. Bynath Dutt Jha* (I. L. R., 6 Cal. 472; S. C., 7 C. L. R. 539) explained.—*Gauri Prasad Koondoo v. Beily*, I. L. R., 9 Cal. 112.

- M.S.C.C. 256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

Power to direct immediate execution of decree for money not exceeding Rs. 1,000.

ON THE 21st August, 1876, certain immoveable property belonging to M was put up for sale, and was purchased by R. On the 20th April, 1877, such sale was set aside under s. 256 of Act VIII. of 1859, on the ground that the order attaching such property and the notifications of sale had not, as required by s. 222, been signed by the Court executing the decree, but by the munsaim of the Court. On the 27th June, 1877, M conveyed such property to H, who purchased it *bona fide*, and for value, and satisfied the incumbrances existing thereon. On the 15th April, 1878, R sued H and M to have the order setting aside such sale set aside, and to have such sale confirmed in his favour, on the ground that it had been improperly set aside under s. 256 of Act VIII. of 1859, the judgment-debtor not having been prejudiced by the irregularities in respect whereof such sale had been set aside. *Held* (by Oldfield, J.) that although such sale might have been improperly set aside, yet inasmuch as the order of attachment and the notifications of sale could have no legal effect, having been signed by the munsarim of the Court executing the decree, and not by the Court, as required by s. 222 of Act VIII. of 1859, and inasmuch as it

would be inequitable, after the incumbrances on such property had been satisfied and the state of things changed, to allow R, after standing by for a year, and permitting dealings with the property, to come in and take advantage of the change of circumstances, and obtain a property, become much more valuable at the price he originally offered, R ought not to obtain the relief which he sought. *Held* (by Straight, J.) that the fact that the Court executing the decree had not signed the order of attachment and the notifications of sale vitiated the proceedings in execution *ab initio*, and rendered the sale which R desired to have confirmed void, and R's suit therefore failed, and had properly been dismissed.—*Ram Dial (Plaintiff) v. Mahtab Singh and others (Defendants)*, I. L. R., 3 All. 701.

Modes of paying money under decree. 257. All money payable under a decree M.S.C.C. shall be paid as follows (namely)—

- (a) into the Court whose duty it is to execute the decree ; or
- (b) out of Court to the decree-holder ; or
- (c) otherwise as the Court which made the decree directs.

257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void, unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Agreement to give time to judgment-debtor. Every agreement to give time for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void, unless it is made with the like sanction.

Every agreement to give time for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void, unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus (if any) shall be recoverable by the judgment-debtor.

THE provisions of s. 257A of the Code of Civil Procedure, 1877, apply only as between parties to the decree.—*Yella v. Munisami*, I. L. R., 6 Mad. 101.

G, the father of the plaintiff, obtained two decrees: one against the defendant A and his father, and the other against A's father alone, and in satisfaction of these decrees obtained a bond without the sanction of the Court, and brought a suit to recover the sum due under the said bond. *Held* that the bond was void under the second clause of s. 257A of the Civil Procedure Code (Act XIV. of 1882).—*Ganesh Shivram v. Abdulabeg*, I. L. R., 8 Bom. 538.

THE decree-holder and judgment-debtor of a decree filed a petition (*sulehnama*) in the Court executing the decree, praying that the Court would sanction an arrangement providing for the payment of the decree by instalments and enhancing the rate of interest made payable by the decree. The Court sanctioned the arrangement. *Held* that the "*sulehnama*" was within s. 257A of the Civil Procedure Code, and the decree might be executed in accordance with its provisions.—*Sita Ram v. Darrath Das*, I. L. R., 5 All. 492.

THE parties to a decree for money, dated the 14th July, 1871, entered into a compromise, whereby, in lieu of a portion of the decretal money, the decree-holder was placed in possession of certain property, and the remainder of the decretal money was to be paid by fixed annual instalments, and, in case of default in the payment of any instalment, it was agreed that the entire amount should become immediately realizable by execution of the decree. On the 11th December, 1882, the decree-holder, alleging default in payment of the instalments, applied for execution of the compromise. *Held* that such an agreement could not be treated as an instalment decree, and, as such, capable of execution. *Debi Rai v. Gokal Prasad* (I. L. R., 5 All. 585) followed.—*Ramlakhan Rai v. Bakhtaur Rai*, I. L. R., 6 All. 623.

ON THE 27th August, 1878, the holder of a decree for money and the judgment-debtor agreed that the amount of the decree should be payable by instalments, and that, if default were made in payment of any one instalment, the whole decree should be executed. The Court executing the decree sanctioned this agreement. On the 28th November, 1881, default having been made, the decree-holder applied for recovery of the whole amount of the decree. *Held* that the application was not one to which art. 179, sch. ii of the Limitation Act, 1877, was applicable, but art. 178, and the period of limitation began to run from the date of default. The principle recognized in *Baghubans Gir v. Sheosaran Gir* (I. L. R., 5 All. 243) and *Kalyanbhai Dipchand v. Ghanashamlal Jadunathji* (I. L. R., 5 Bom. 29) applied.—*Sham Karan v. Priari*, I. L. R., 5 All. 596.

M.S.C.C. **258.** If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or, having appeared, fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid.

AN adjustment of a decree not certified to the Court by either party within the time limited by law cannot be recognized as a bar to execution.—*Chedumbara Pillai* (Defendant), *Appellant, v. Ratna Ammal* (Plaintiff), Respondent, I. L. R., 3 Mad. 113.

A *SUIR* for the recovery of money paid to a judgment-creditor out of Court in satisfaction of a decree, but not certified, is barred by s. 244 (c) of Act X. of 1877, and by the last paragraph of s. 258 as amended by Act XII. of 1879.—*Pátankar* (Plaintiff) *v. Devji* (Defendant), I. L. R., 6 Bom. 146.

A DECREE-HOLDER, who, although he has settled with his judgment-debtor out of Court, yet nevertheless sues out execution against him, will be liable to an action for damages at the hands of the judgment-debtor. S. 244 or 258 of Act X. of 1877 have made no change in the law in this respect —*Guni Khan and another* (Plaintiffs) *v. Koonjbehari Sein* (Defendant), 3 Cal. Law Rep. 414.

WHERE a judgment-debtor has, out of Court, partly satisfied his decree-holder subsequent to the transmission of the decree for execution to another Court, but before actual execution has been applied for, he is entitled, on execution in full being demanded, to an order from the Court to which the decree is transferred for execution, calling upon the decree-holder to certify the fact of such part-payment.—*Rajendro Nath Roy Bahadur* (Judgment-debtor) *v. Chunno Mal and Kali Charan Lahoree* (Decree-holders), I. L. R., 5 Cal. 448.

IN 1878, a decree-holder, having received certain grain from the judgment-debtor in satisfaction of the decree, failed to certify satisfaction of the decree to the Court in accordance with the provisions of s. 258 of the Code of Civil Procedure, 1877, and executed the decree nevertheless. In a suit for damages against the decree-holder it was held that the judgment-debtor's remedy for the wrong suffered was not taken away by the provisions of ss. 244 and 258 of the Code.—*Vinayaghar Reddi* (Plaintiff) *v. Subbaka* (Defendant), I. L. R., 5 Mad. 397.

THE plaintiff held a decree against the defendant, and in execution of it attached the defendant's property. A compromise was then made, by which the defendant executed to the plaintiff the bond sued upon, in satisfaction of the judgment-debt. The compromise, however, was not certified to the Court. *Held* that the bond was without consideration. The adjustment of the decree, not having been certified to the Court, was not binding on the plaintiff, and therefore constituted no valid consideration.—*Pándurang Rámchandra v. Náráyan*, I. L. R., 8 Bom 300.

N, HAVING obtained a decree in a suit against K, requested him to discharge certain sums due on outstanding bonds which N had given to third parties, promising to credit the sum so paid to the amount due under the aforesaid decree. K paid as requested, but N took out execution in full of the decree, and the Court refused to recognize the payments made by K out of Court. In a suit by K for the money paid as aforesaid, *held* that the payments not having been made directly in adjustment of a decree, the suit was not barred.—*Kunhi Moidin Kutti v. Ramenuuni*, I. L. R., 1 Mad. 203.

WHERE a decree-holder, declared to be entitled to possession of certain lands, subsequent to decree executed a pattá in favour of his judgment-debtor, who was then in possession, and afterwards took out execution under his decree, *held* (on an objection by the judgment-debtor that, under these circumstances, he was entitled to possession) that satisfaction of the decree not having been entered up, such objection could not be dealt with under s 244 of the Civil Procedure Code. *Held* also that s 258 of the Civil Procedure Code deals with the adjustment of any decree, and not merely with the adjustment of a money-decree.—*Baba Mohamed v. Webb*, I. L. R., 6 Cal. 786.

CERTAIN immoveable property having been attached in execution of a decree for money, dated in 1879, directing the sale of such property, T, who had purchased such property in 1880, objected to the attachment. His objection having been disallowed, he sued to establish his right to the property and for the removal of the attachment. He claimed on the ground, amongst others, that the decree of 1879 had been wholly adjusted. The alleged adjustment had not been certified under s. 258 of the Civil Procedure Code. *Held* that the provisions of that section did not debar the Courts trying the suit from determining, as between T and the decree-holder, whether the decree of 1879 had been adjusted or not. *Sita Ram v. Mahipal* (I. L. R., 3 All. 533) and *Shadi v. Ganga Sahai* (I. L. R., 3 All. 538) followed.—*Tegh Singh v. Amin Chand*, I. L. R., 5 All. 269.

THE holder of a money-decree agreed to accept, in satisfaction of the amount thereof, a part-payment in cash, and a lease of certain lands for five years, rent-free. The judgment-debtor made the payment, and gave the lease agreed on. Afterwards the decree-holder executed the decree against the judgment-debtor, and then the judgment-debtor brought the present suit for a declaration that the money-decree was satisfied, and for damages against the decree-holder. *Held* that such a suit would lie. *Gunamani Dasi v. Prankishori Dasi* (5 B L. R. 223); *Viraraghava Reddi v. Subbaka* (I. L. R., 5 Mad. 397); *Chembrakandi Musutti v. Themdya Puthalath Shekharan Nayar* (I. L. R., 6 Mad. 41); *Sita Ram v. Mahipal* (I. L. R., 3 All. 533); *Shadi v. Gunga Sahai* (I. L. R., 3 All. 538); and *Ishan Chunder Bundopadhyaya v. Indro Narain Goswami* (I. L. R., 9 Cal. 788) followed; *Patankar v. Devji* (I. L. R., 6 Bom. 146) not followed.—*Poromanand Khasnabish v. Khepoo Paramanick*, I. L. R., 10 Cal. 354.

M, who held a decree against S for possession of certain immoveable property and costs, assigned such decree to S by way of sale, agreeing to deliver the same to him on payment of the balance of the purchase-money. He subsequently applied for execution of decree against S, claiming the costs which it awarded. S thereupon paid the amount of such costs into Court, and, having obtained stay of execution, sued M for such decree, claiming by virtue of such assignment. The lower Court held that the suit was barred by the provisions of s. 244 of Act X. of 1877, and also, treating such assignment as an uncertified adjustment of such decree, that it was barred by the terms of the last paragraph of section 258 of that Act. *Held* that the suit was not barred by anything in either of those sections. The words "any Court" in the last paragraph of section 258 refer to proceedings in execution

and to the Court or Courts executing a decree.—*Sita Ram and another (Plaintiffs) v. Mahiphal and another (Defendants)*, I. L. R., 3 All 533.

S, ALLEGING that a money-decree against him, held by G, had been adjusted out of Court by a payment in cash and the delivery of certain property, and that M had, notwithstanding such adjustment, applied for execution of such decree, and recovered the amount thereof, as the Court executing such decree had refused to determine whether it had been satisfied on the ground that such adjustment had not been certified, sued M for the money which he had paid him out of Court. *Held* that the suit was not barred by the provisions of s. 244 of Act X. of 1877, or s. 258 of that Act. The last paragraph of s. 258 means that the Court executing the decree shall not recognize an uncertified payment or adjustment out of Court. It does not prohibit a suit for money paid to a decree-holder out of Court, and the payment of which, not being certified, could not be recognized, and which the decree-holder had not returned, but had misappropriated, by taking out execution of the decree a second time and securing the amount in full through the Court.—*Shadi and another (Plaintiffs), Ganga Sahay (Defendant)*, I L R., 3 All. 538.

THE provisions of s. 206 of the Civil Procedure Code, Act VIII. of 1859, only prevent the Court executing the decree from recognizing a payment made out of Court, and do not bar a suit for the refund of such payment. G held a decree against D, who satisfied it out of Court, and obtained a receipt from G to the effect that it was satisfied. Notwithstanding this, G executed the decree, and recovered the amount of it through the Court, although D pleaded satisfaction in the execution-proceedings, and produced the receipt. In a suit brought by D against G for refund of the money received by G out of Court, the defendant contended that the suit was not maintainable. *Held* that it was maintainable according to the law as it stood before the passing of Act XII of 1879. *Gunamani v. Paran Kishore* (5 B L R 223) and *Giliwad v. Rihimtulla* (4 Bom. H. C. Rep. 76) followed. *Quere*—Whether such a suit is maintainable under s. 36 of Act XII of 1879, which has been substituted for s. 258 of the Civil Procedure Code (Act X. of 1877). *Held* also that the statement contained in the receipt passed by G to D, to the effect that the decree had been satisfied, was sufficient to shift the burden of proof to the defendant to show that it was an incorrect statement—*Divalata (Original Plaintiff), Applicant, v. Ganesh Shastri (Original Defendant), Opponent*, I. L. R., 4 Bom. 295.

ON AN application for execution for the full amount due under a decree by some of several joint decree-holders, the judgment-debtor objected to execution being granted for the full amount of the decree on the ground that he had already paid off a large portion of the money due under the decree to B, one of the joint decree-holders. The payment was made out of Court, but B, who claimed to be entitled to a 12½ annas share in the decree, certified the payment in the manner prescribed by s. 254 of the Civil Procedure Code (Act XIV. of 1882), and represented that his claim had been satisfied in full. The other joint decree-holders denied B's right to the 12½ annas share claimed by him, and refused to recognize the payment said to have been made to him. The lower Court disallowed the objection, and granted execution for the full amount of the decree. *Held* that, regard being had to the provisions of the General Clauses' Act (I. of 1868), the word "decree-holder" in s. 258 of Act XIV of 1882 should be read in the plural, and looking at the provisions of s. 231 of the later Act, the Court ought not to recognize payments made out of Court, unless made and certified for the benefit of all the joint decree-holders of any portion of the decree in excess of that to which the decree-holder so paid is undisputedly entitled. *Held* also that a judgment-debtor is entitled to credit for any sum paid *bonâ fide* to one of several joint decree-holders, and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share. *Held* further that in this case the lower Court was wrong in wholly ignoring the payment certified by the decree-holder B, and that it should have determined, *first*, whether the payment to B was a fraud on the other joint decree-holders; and, *secondly*, what amount the latter were entitled to have out of the whole decree, the latter being the main question between the applicants for execution and the judgment-debtor, and as such clearly within the scope of s. 244 of the Civil Procedure Code. *Banee Nyna Kooer v. Doolce Chund* (22 W. R. 77); *Brojeswari Chowdhranee v. Tripoora Soonderee Debi* (3 C. L. R. 513);

and Mahima Chandra Roy v. Pyari Mohan Chowdhry (2 B. L. R., Ap. 43)—Tarruck Chunder Bhattacharjee v. Divendro Nath Sanyal, I. L. R., 9 Cal. 831.

259. If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property, or by both imprisonment and attachment if necessary. (except so far as relates to recovery of wives).

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree, and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

A, who had been directed by a decree to refrain from preventing her daughter returning to her husband, after the date of the decree permitted her daughter, who was of age, to reside in her house. *Held* that such conduct on the part of A was no such evidence of interference with her daughter's return as would justify the execution of the decree against her, under the provisions of s. 200 of Act VIII. of 1859 (corresponding with ss. 259 and 260, Act XIV. of 1882).—*Ajnasi Kuar (Judgment debtor) v. Suraj Pershad (Decree-holder)*, I. L. R., 1 All. 501.

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for the performance of, or abstinence from, any other particular act, has been made, has had an opportunity of obeying the decree or injunction, and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree, and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance (if any) to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree, and paid all costs of executing the same, which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

By a decree relating to certain joint property belonging to the plaintiff and defendant, but which had previously been held in the sole name of the defendant,

if was directed that the plaintiff and defendant should jointly manage the property, and that the names of both should appear in all papers connected with such property. The plaintiff subsequently applied to have his name registered in the collectorate, but was opposed by the defendant, who, it appeared, also allowed the amlahs of the estate to continue to use his sole name. *Held* that the Court had, under the circumstances, jurisdiction under s 260 of the Civil Procedure Code to attach the defendant's property until he had obeyed the decree by having the joint names of himself and the plaintiff inserted in all documents belonging to the estate.—Gauri Prasad Moitra (Judgment-debtor), Appellant, *v.* Bhola Nath Sanyal (Decree-holder), Respondent, 8 Cal. Law Rep. 487.

UPON AN application under s. 235 of Act X of 1877 (Civil Procedure Code) for the execution of a decree which directed the judgment-debtor forthwith to pull down and remove such portion of a wall as had been erected by him upon the wall of the decree-holder, the mode in which the assistance of the Court was required to be given was stated in column j of such application to be by giving the decree-holder possession of his wall by pulling down the wall erected thereon. The Court directed an order to issue to the Nazir to remove the judgment debtor's wall from the top of the decree-holder's wall. *Held* that the decree-holder's application could not be granted in that form, and that he should have asked the assistance of the Court to be given in the way provided for by s. 260 of Act X of 1877, by the imprisonment of the judgment-debtor, or the attachment of his property, or both. *Held* also that the Court was wrong in passing the order it had, but that it should have pointed out to the decree-holder the manner in which he should have asked the assistance of the Court to be given, and the remedy to which he was entitled; and that, upon such amended application being made, the proper course to pursue was to serve a notice on the judgment-debtor, directing him to comply with the order contained in the decree within a time to be fixed by such notice; and that, if he failed to comply with such order within the time so limited, the Court might then, at the instance of the decree-holder, make an order, either for the judgment-debtor's imprisonment, or for the attachment of his property, due regard being had to the provision of s 260 in the latter case. *Held* further that the High Court, in special appeal, should not vary the order for execution, which had been passed in such a way as to give the decree-holder that relief for which he did not ask.—Protab Chunder Dass (Judgment-debtor) *v.* Peary Chowdhrair (Decree-holder), I. L. R., 8 Cal. 174.

261. If the decree be for the execution of a conveyance, or for the

Decree for execution of conveyances, or endorsement of negotiable instruments.

endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections (if any) thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree, and execute the duplicate so altered :

Provided that, if any party object to the draft so served as aforesaid his objections shall, within the time so fixed, be stated in writing, and

argued before the Court; and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

262. The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section, may be in the following form: "*C. D.*, Judge of the Court of (or as the case may be), for *A. B.* in a suit by *E. F.* against *A. B.*," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

263. If the decree be for the delivery of any immoveable property, possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

264. If the decree be for the delivery of any immoveable property in the occupancy of a tenant or other person, entitled to occupy the same, and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property:

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

DELIVERY of possession by going through the process prescribed by s. 224 of Act VIII. of 1859 is the only way in which the decree of the Court awarding possession to the plaintiff can be enforced; and as, in contemplation of law, both parties must be considered as being present at the time when the delivery is made, such delivery must, as against the defendant, be deemed equivalent to actual possession. As against third parties such symbolical possession is of no avail, because they are not parties to the proceedings. But if the defendant subsequently dispossesses the plaintiff by receiving the rent and profits, the plaintiff will have twelve years from such dispossession to bring another suit.—*Juggobundhu Mukerjee and others (Plaintiffs) v. Ram Chunder Bysak (Defendant)*, I. L. R., 5 Cal. 584.

265. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law (if any) for the time being in force for the partition, or the separate possession of shares, of such estates.

S. 265 does not apply to property held on raiyatwari tenure, but to permanently settled estates.—*Muttu v. Kudalalaga*, I. L. R., 6 Mad. 97.

In 1862 it was held by the Sadr Court that s. 225 of Act VIII. of 1859 did not apply to raiyatwari estates. This ruling having always been acted on in the Madras

Presidency, *held* by the Full Bench that a different construction should not, under these circumstances, be placed on s. 265 of the Code of Civil Procedure, 1882. *Muttu v. Kudulalaga* (I. L. R., 6 Mad. 97) confirmed.—*Muttuchidambara v. Karuppa*, I. L. R., 7 Mad. 382.

WHERE one of several co-sharers, owners of a piece of land defined by metes and bounds, and forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of the Government revenue annulled, such suit is cognizable by the Civil Courts which have jurisdiction to determine the plaintiff's right to have his share divided and to make a decree accordingly.—*Chundernath Nundi v. Hur Narain Deb*, I. L. R., 7 Cal. 153.

A SUIT will not lie for partition of portion only of a joint estate. Accordingly, when the plaintiff sued for partition of a portion of a joint estate and for *khas* possession of the share which might on the partition be allotted to him, alleging that he had been deprived of possession of that portion by his co-sharers in collusion with others, it was held the suit would not lie. Although under s. 265, Act X. of 1877, a decree may be made for partition of revenue-paying land, yet that decree must be carried into execution solely by the Collector.—*Ramjoy Ghose and others* (Defendants), *Appellants, v. Ram Runjun Chuckerbutty* (Plaintiff), Respondent, 8 Cal. Law Rep. 367.

V MORTGAGED to the plaintiff his house and certain undivided land in which H and others, Hindu co-parceners, had a share. R bought the interest of H in the land at Court-sale and let to H and V, who, failing to pay rent, were sued by R, who got a decree for possession. This decree was transferred for execution to the Collector, who sold the land, and rateably distributed the proceeds, except to V, who declined to take the amount tendered as his share. The plaintiff sued V and the purchasers under R's decree to recover his mortgage-debt by a sale of the property mortgaged to him. *Held* that R's decree, not being for partition of the family property, or for the separate possession of a share, was not one contemplated by s. 265 of the Code of Civil Procedure. The proceedings of the Collector were without jurisdiction, and the plaintiff was entitled to ignore them, and assert his claim under the mortgage. That the defendants being in actual possession—albeit through a sale under a void decree—could not be ousted in the present suit, and were entitled to say that the plaintiff had not proved his title to sell the specific lands mortgaged.—*Narayan v. Vithu*, I. L. R., 8 Bom. 539.

M OBTAINED against R a decree for possession of "a one-fourth share of the two fallow lands, Nos. 490 and 541, measuring 7 bighas and 2 bighas 16 biswas respectively, after removal of the trees planted thereon." The Court, in executing the decree, placed the decree-holder in joint possession of the two plots, to the extent of the one-fourth share decreed to him, but declined to remove the trees until the said share had been specifically ascertained and partitioned by the Collector, in reference to s. 265 of the Civil Procedure Code. *Held* that the decree could not be understood to entitle the plaintiff to remove the trees from a larger area than that to which he was entitled under that decree; and that, so long as that area remained joint and unascertained, the plaintiff could not execute the decree in the manner sought. *Held* also that the decree in the present case could not be called a "decree for the partition or for the separate possession of a share of an undivided estate paying revenue to Government," within the meaning of s. 265 of the Civil Procedure Code, so as to require the intervention of the Collector for the purpose of executing the decree; and that the Court of first instance, in order to meet the exigencies of the decree, should have separated the one-fourth to which the plaintiff was declared entitled, and, in executing the decree, should have ordered that the trees standing on the one-fourth area should be uprooted.—*Ram Dayal v. Megu Lal*, I. L. R., 6 AH 452.

IN 1851 an estate was brought under *butwara* under the provisions of Regulation XIX. of 1814. At such *butwara*, a portion of the estate, being covered with water, and unfit for cultivation, was not divided, but left joint amongst all the co-sharers, the land-revenue payable on account of the whole estate being apportioned amongst the several estates into which the portion divided was split up. Subsequently, on the portion remaining joint becoming dry and fit for cultivation, an application was

made by one of the co sharers to the Collector to partition the same under the provisions of Beng. Act VIII. of 1876, but that officer refused to do so, on the ground that the land "did not bear an assessed revenue, and was not shown in the *towji*." In a suit brought under the above circumstances to compel the Collector to make the partition, and in the alternative to have it made by the Civil Court, held that though the reason given by the Collector for refusing was an erroneous one, he was not bound to make the partition under the provisions of Beng. Act VIII. of 1876, as the land in suit was not liable for the payment of one and the same demand of land-revenue, and was therefore not a joint undivided estate within the terms of s. 4, cl 9 of that Act. Held also that the word "estate," as used in s. 265 of the Civil Procedure Code, must not be construed in the same limited and defective sense in which it is used in Act VIII. of 1876, but must be taken to be there used in its ordinary signification, and that consequently the plaintiff was entitled to a decree for partition under the provisions of that section. *Chundernath Nundi v. Hur Narain Deb* (I. L. R., 7 Cal. 153) approved.—*Secretary of State v. Nundun Lal*, I. L. R., 10 Cal. 435.

F.—Of Attachment of Property.

266. The following property is liable to attachment and sale in M.S.C.O. execution of a decree (namely), lands, houses (except so far as relates to immovable property), other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government-securities, bonds, or other securities for money, debts, shares in the capital or joint-stock of any railway, banking, or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power, which he may exercise, for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

- (a) the necessary wearing apparel of the judgment-debtor, his wife, and children;
- (b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such;
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists;
- (d) books of account;
- (e) mere rights to sue for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions;
- (h) the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount;
- (i) the pay and allowances of persons to whom the Native Articles of War apply;
- (j) the wages of labourers and domestic servants;

- (k) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (l) a right to future maintenance.

Explanation—The particulars mentioned in clauses (g), (h), (i), and (j), are exempt from attachment or sale, whether before or after they are actually payable:

Provided also that nothing in this section shall be deemed

- (a) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or
- (b) to affect the Army Act, 1881, or any similar law for the time being in force.

UNDER clause 7 of s. 266 of the Code of Civil Procedure, 1882, a moiety of the salary of a public officer drawing half-pay (exceeding Rs. 20 per mensem) on sick leave is liable to attachment.—*Beard v. Egerton*, I. L. R., 6 Mad. 179.

A DEBT secured by mortgage of immoveable property cannot be sold in execution of a decree under the provisions of the Civil Procedure Code applicable to moveable property.—*Srinath Dutt v. Gopal Chunder Mitra*, I. L. R., 9 Cal. 511.

ACT X. of 1877, s. 266, proviso c, does not prohibit the sale (in execution of decree) of property specifically mortgaged, albeit the property be materials of a house belonging to or occupied by an agriculturist.—*Bhagvándás v. Haithibhai*, I. L. R., 4 Bom. 25.

THE bar in s. 266 of the Civil Procedure Code to the attachment of gratuities allowed by Government to its ex-servants, military and civil, is not limited to such gratuities as are allowed to "pensioners," but applies to a gratuity granted in consideration of past services.—*Bawan Das v. Mul Chand*, I. L. R., 6 All. 173.

A HERITABLE right to receive a certain monthly allowance originally assigned in lieu of a share of landed property is not a mere right to maintenance or anything else exempted by the proviso to s. 266 of the Civil Procedure Code, and is saleable in execution of a decree.—*Salamat Hossein v. Luckhi Ram*, I. L. R., 10 Cal. 521.

HELD that ss. 266 and 295 must be read together, and that an ordinary judgment-creditor is not entitled, under s. 295, to a rateable proportion of the assets realized by the sale of such house or building under a decree obtained by another creditor for rent due to him in respect of the said house or building.—*Mániklal Venilal v. Lakha and Mánasing*, I. L. R., 4 Bom. 429.

WHERE the decree of a Civil Court expressly declares that a person's right in a *writti* shall be sold, it is not competent in execution-proceedings to question the command, on the ground of the *writti* being protected from sale under s. 266 of the Code of Civil Procedure, or from its being by the nature of it unsaleable to the public at large.—*Sadāshiv Lalit v. Jayantibai*, I. L. R., 8 Bom. 185.

IN CASE of pensions not exempted from attachment under s. 266 of the Civil Procedure Code (Act X. of 1877), it is only arrears in respect thereof actually accrued due that are attachable in execution of a decree. *Syud Tuffuzal Hussain Khan v. Rughunath Pershad* (14 Moore's I. A. 30; S. C., 7 B. L. R. 186) cited and followed.—*Bhyrub Chunder Roy (Plaintiff) v. Madhub Chunder Sein (Defendant)*, 6 Cal. Law Rep. 19.

THE right to sue for mesne-profits is a "right to sue for damages" within the meaning of s. 266, cl. e, of the Code of Civil Procedure, and, therefore, cannot be sold in execution of decree. Where, therefore, the plaintiff purchased the right to sue for mesne-profits at a sale in execution of a decree, *held* that a suit by him to enforce the right was not maintainable.—*Shyam Chand Koondoo v. Land Mortgage Bank of India, Limited*, I. L. R., 9 Cal. 695.

PERSONS who agree to spin cotton belonging to a spinning and weaving company, and to receive a certain amount of money for a certain quantity of cotton spun by them, are labourers within the meaning of s. 266 of the Code of Civil Procedure,

Act X. of 1877, and therefore their remuneration is wages, which, under clause *f* of the section, cannot be attached in execution of a decree.—*Jechand Khusal (Applicant) v. Abá and Báiká (Opponents)*, I. L. R., 5 Bom. 132.

BEFORE property of a judgment-debtor can be exempted from execution as falling under the head of the property described in s. 266 of the Code of Civil Procedure, it is necessary that the Court should first express its opinion that such property is necessary to enable the execution-debtor to earn his livelihood, and the Court, which must decide this point, is the Court which issues the execution. S 14 (*a*), part ii., chapter 5 of the General Rules and Circular Orders of the High Court commented on.—*Bakhr Mohammed v. Doorga Churn Shaha*, I. L. R., 10 Cal. 39.

THE right or interest which the vendor of immoveable property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, is not, so long as the conveyance has not been executed, a debt, but a merely possible right or interest, and as such, under s. 266 of Act X. of 1877, is not liable to attachment and sale in the execution of a decree. The person who purchases such a right or interest at a sale in the execution of a decree takes nothing by his purchase.—*Ahmud-ud-din Khan (Plaintiff) v. Majlis Rai and others (Defendants)*, I. L. R., 3 All. 12.

DEBTS due to a British subject by the Gáikwár Government, or by a subject of that Government or of a State in the Province of Káthiáwár, are not debts which, under s. 266 of the Code of Civil Procedure (Act X. of 1877), are liable to attachment in execution of a decree. Claims over which no Court in British India has jurisdiction are not debts liable to be attached under s. 266 of the Civil Procedure Code (Act X. of 1877). The mere circumstance that the garnishee is, at the time of the application for attachment, beyond the limits of British India, would not of itself render the debts not liable to be attached.—*Ghamshámlal (Applicant) v. Bhánsáli (Opponent)*, I. L. R., 5 Bom. 249.

THE expression, "materials of houses and other buildings belonging to, and occupied by, agriculturists," used in s. 266, cl. *c*, of the Code of Civil Procedure, is intended to exempt from attachment and sale the house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling. The exemption does not extend to other houses not in the physical occupation of an agriculturist owner as a dwelling appropriate or convenient for his calling. The exemption extends, after the death of an agriculturist debtor, to his representative who occupies the house in good faith as an agriculturist, and who does not take it up merely with the view of defrauding his creditor.—*Rádhakisan Hakumji v. Balvant Rámji*, I. L. R., 7 Bom. 530.

K, a servant in the employment of the East India Railway Company, was recommended, by the Traffic Manager, a bonus in consideration of long and good services. This recommendation was sanctioned, and the amount of the bonus was received by the District Paymaster. Before payment to K, the money was attached in execution of a decree obtained against him by J. *Held* that inasmuch as the bestowal of the money was a gift of moveable property of date subsequent to the 1st July, 1882, and was not evidenced by a registered instrument, it could only be effected by actual delivery; that as there had been no such delivery as completed the transfer (s. 123 of the Transfer of Property Act, and s. 90 of the Contract Act), the money was not at K's disposal, and he could not have enforced payment; and that the money was therefore not liable to attachment in execution of a decree against him.—*Janki Das v. East Indian Railway Company*, I. L. R., 6 All. 634.

ON 28th September, 1877 (*i e.*, three days before Act X. of 1877 came into operation), an application was made for the enforcement of a money-decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under Act VIII. of 1859, s. 216, a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed (at which date Act X. of 1877 had come into force), and contended that, under s. 266, cl. *g*, of that Act, the pension was no longer attachable. *Held* that all proceedings commenced and pending when Act X. of 1877 became law were, under Act I. of 1868, s. 6, to be governed by the law theretofore in force; the general rule of construction contained in that section not being affected

or varied by Act X. of 1877, ss. 1 and 3, and that a *bond file* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment.—*Vidyarám v. Chandra Shekharám*, I. L. R., 4 Bom. 163.

M.S.C.C. 267. The Court may, of its own motion, or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and before issuing the summons of its own motion shall declare the person on whose behalf the summons is so issued.

M.S.C.C. 268. In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public Company or Corporation, (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,

(a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(b) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon;

(c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the Court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order, requiring the officer whose duty it is to disburse the salary to withhold, every month, such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the Court-house, and shall be served on the officer so required.

Every such officer may, from time to time, pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

EXCEPT in the manner allowed by s. 20, Act XI. of 1865, the Judge of the Small Cause Court cannot now send a decree of his own Court for execution by

another Court, nor can he issue an order under s. 268, Act X. of 1877, out of his own jurisdiction—*Munshie Husein Ali (Plaintiff) v. Ashotosh Gangooly (Defendant)*, 3 Cal. Law Rep. 30.

UNDER the provisions of s. 268 of the Code of Civil Procedure (Act X. of 1877), bonds cannot be sold till the end of the six months from the date of attachment. A Court of Small Causes cannot appoint a receiver. Bonds, therefore, on which recovery will be time-barred before the date on which a sale can legally be made, cannot be made available for satisfaction of the judgment-creditor's debt.—*Nur Singh Dass Raghunath Dass (Plaintiffs) v. Tulsi Ram Bin Daulat Ram (Defendants)*, I. L. R., 2 Bom 558.

THE right or interest which the vendor of immoveable property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, is not, so long as the conveyance has not been executed, a debt, but a merely possible right or interest, and as such, under s. 266 of Act X. of 1877, is not liable to attachment and sale in the execution of a decree. The person who purchases such a right or interest at a sale in the execution of a decree takes nothing by his purchase.—*Ahmud-ud-din Khan (Plaintiff) v. Majlis Rai and others (Defendants)*, I. L. R., 3 All. 12.

A EXECUTED a promissory note in favour of B. C obtained a money-decree against B, and in execution of such decree the Court proceeded to attach the note by an order issued to A under s. 268 of the Civil Procedure Code, and subsequently to sell B's title and interest in the note by auction. D, assignee of the purchaser at the sale, sued A for recovery of the amount of the note. *Held* that there had been no valid attachment of the note, actual seizure and delivery under ss. 270 and 299 having been omitted; and that, consequently, nothing had passed to D by the execution-sale.—*Batcharya v. Latchmidvana*, 4 Ind. Jur. 166.

A DECREE-HOLDER, by a prohibitory order issued under Act X. of 1877, s. 268, attached a debt due to his judgment-debtor. This person, served with the order, applied, under s. 278, to have the attachment removed. *Held* that the application could not be entertained under s. 278, that section having no application to the case; but that, before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287, to ascertain all the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property, of which sale is sought, is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale.—*Harilal Anthabhai v. Abhesang Mern*, I. L. R., 4 Bom. 323.

269. If the property be moveable property in the possession of the M.S.C.G.

Attachment of moveable judgment-debtor, other than the property mentioned in the first proviso to section 266, the property in possession of judgment-debtor. attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

The Local Government may, from time to time, make rules for the maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

M.S.C.C.

270. If the property be a negotiable instrument not deposited in Attachment of negotiable instruments. a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court, and held subject to the further orders of the Court.

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M.S.C.C.

271. No person executing any process under this Code, directing Seizure of property in or authorizing seizure of moveable property, building. shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be :

M.

Provided that, if the room be in the actual occupancy of a woman who, according to the customs of the country, Seizure of property in zanáńás. does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

A BAILIFF or nazir has authority to break open the door of a shop in order to execute a writ of attachment, the previously existing law on the subject not being altered by Act X. of 1877, s. 271.—*Damodar Parsotam v. Ishvar Jetha*, I. L. R., 3 Bom. 89.

It is not necessary that a special order of Court should be made, empowering an officer authorized to arrest a purda-náshin lady to enter the zanáńá of the house in which she resides. Under s. 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zanáńá, in order to effect the arrest.—*S. M. Kadumbinee Dossee v. S. M. Koylashikaminee Dossee*, I. L. R., 7 Cal. 19.

M.S.C.C.

272. If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues :

Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such Court.

THE Court has no discretion to refuse an application, for attachment of property in Court, made under s. 272 of the Civil Procedure Code.—*Noorjahan Begum, Decree-holder (Appellant), v. Mashitty Khanum and another (Respondents)*, 7 Cal. Law Rep. 17.

A AND B were entitled to receive annually and for ever a specified amount by way of malikana right from the Collector as compensation for their extinguished rights in lakhiráj lands. In execution of a decree, C, on 13th September, purported to attach, under s. 237 of Act VIII. of 1859, A's share in such specified amount.

Subsequent to this attachment, namely, on 23rd September, 1873, A and B mortgaged their rights to the plaintiff. In a suit brought by him against A, B, and C, *held* that attachment under s. 237 was not applicable to a right to receive money for ever; that such an attachment is only good so far as it relates to any specific amount, which may be set forth in the request to the officer in whose hands the moneys are, as being then payable or likely to become payable; and that the attachment in question was therefore invalid. *Semble*.—The attaching creditor should have proceeded under ss. 235 or 236. In either of such cases the defendant, the person to whom the money was payable, would be entitled to notice that he was not at liberty to alienate his rights.—*Nilkanto Dey (Defendant) v. Hurro Soonderee Dossee (Plaintiff)*, I. L. R., 3 Cal. 414.

IN EXECUTION of a decree of a Munsif's Court, the plaintiff attached certain money, the proceeds of decrees which her judgment-debtor had obtained against third parties, then lying in a Small Cause Court to her credit, and subsequently obtained an order from the Munsif directing the same to be paid to her in satisfaction of her decree, which order was duly communicated to the Small Cause Court Judge. Subsequently, the defendant, who held another decree against the same judgment-debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under s. 272 of the Civil Procedure Code, to enquire whether the plaintiff was entitled to any priority over the second attaching creditor, and, having decided that question in the negative, divided the sale-proceeds rateably between them. In a suit brought by the plaintiff, under the above circumstances, to recover from the defendant the portion of the sale-proceeds so paid to him, *held* that s. 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court Judge to execute her decree, and it had never been transferred to the Court for execution; and that the proviso in s. 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held* also that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge, and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought. *Quære*.—Whether an order made by a Court under s. 272 was intended by the Legislature to be a final order?—*Gopee Nath Acharjee v. Achcha Bibee*, I. L. R., 7 Cal. 553.

273. If the property be a decree for money passed by the Court M.S.C.C.

Attachment of decree for which passed the decree sought to be executed, (so far as relates to decrees for moveable property).
 money. the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(a) the Court which passed the decree sought to be executed cancels the notice, or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree, and apply the proceeds in satisfaction of the decree sought to be executed.

In the case of all other decrees the attachment shall be made by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

A DECREE for money obtained by a judgment-debtor is not a debt, which, by virtue of s. 266 of the Code of Civil Procedure, can be attached and sold. Where a decree-holder desires to render a decree obtained by his judgment-debtor available for the satisfaction of his own decree, the procedure laid down by s. 273 of the Code of Civil Procedure must be followed.—*Tiruvengada v. Vythilinga*, I. L. R., 6 Mad. 418.

HELD that Act X. of 1877 does not contemplate the sale of a decree for money as the result of its attachment in the execution of a decree, and the attachment of a decree for money in the mode ordained in s. 273 cannot lead to its sale. Held also that the last clause but one of s. 273 applies to other than money-decrees. Where two decrees for money, although they were not passed by the same Court, were being executed by the same Court, held that the provisions of the first clause of s. 273 of Act X. of 1877 were applicable on principle.—*Sultan Kuar (Judgment-debtor) v. Gulzari Lall (Decree-holder)*, I. L. R., 2 All. 290.

274. If the property be immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift, or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

HELD that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale. *Mohunt Megh Lall Pooree v. Shib Pershad Madi* (I. L. R., 7 Cal. 34) dissented from.—*Rahchandrar Bahadur v. Kamta Prasad*, I. L. R., 4 All. 300.

A SUIT on a mortgage foreclosed under Reg. XVII. of 1806, s. 8, comprising property attached before the date of the mortgage under s. 81 and the following section of Act VIII. of 1859, was brought against the purchaser of the attached property, which had been sold under the decree obtained by the attaching creditor. The defence was, that the mortgage, falling within the provisions of s. 240 of the Act, was void as against the attaching creditor and those claiming under him. For the mortgagee it was contended that the attachment could not prevail, it not having been proved affirmatively that the requirements of s. 239, relating to the intimation

of the attachment, had been complied with. *Held* that this objection to the validity of the attachment could not be raised for the first time on this appeal, even if it was not rather for the mortgagee, seeking to deprive the attaching creditor of his possession, to prove the non-observance of the formalities in question. *Semble*.—A re-attachment of property after decree does not imply an abandonment of an attachment obtained before decree.—*Ramkrishna Das Surrowji v. Surfunnissa Begum*, I. L. R., 6 Cal. 129.

APPLICATION was made for the attachment, in execution of a decree, of a muafi holding belonging to the judgment-debtor. The numbers and areas given in such application as the numbers and areas of the lands comprised in such holding were the numbers and areas of certain revenue-paying lands, and were not the numbers and areas of any lands held as muafi by the judgment-debtor. The order of attachment described the property as described in the application for attachment. The judgment-debtor having alienated by sale a muafi holding belonging to him, the decree-holders sued to have such alienation set aside as void under the provisions of s. 276 of Act X. of 1877. *Held* that, having regard to the description given in the application for attachment and the order of attachment, it could not be said that the muafi holding alienated by the judgment-debtor was under attachment at the time of the alienation, and its alienation was therefore not void under s. 276 of Act X. of 1877. *Held* also that the material misdescription of the property in this case in the order of attachment protected the alienees, who were *bonâ fide* purchasers, from having the alienation set aside as void under s. 276, as the attachment could not, under the circumstances, be held to have been "duly intimated and made known," as required by that section.—*Gumani (Plaintiff) v. Hardwar Pandey and others (Defendants)*, I. L. R., 3 All. 698.

THE defendant obtained a decree against D, father of the plaintiffs, for satisfaction of his debt by the sale of a moiety of a village mortgaged to him by D. In execution of it he attached the mortgaged property, the attachment being made, under Act X of 1877, s. 274, by an order prohibiting D from transferring or charging the property in any way, and all persons from receiving it from him by purchase, gift, or otherwise. The plaintiffs thereupon applied for the removal of the attachment, but their application was rejected. They then sued for a declaration of their right to two-thirds of the property. The District Judge, who tried the suit, rejected it on the ground that it was barred by Act I. of 1877, s. 42, because the plaintiffs might have sought further relief than a mere declaration of title, and omitted to do so. He was of opinion that the attachment constituted a dispossession, and that the plaintiffs might have asked to be replaced in possession, or, at any rate, for the removal of the attachment. *Held* by the High Court on appeal that the plaint was not open to objection on the ground that it only asked for a declaratory decree, without any consequential relief; that the prohibitory order to D did not constitute a dispossession of D, and still less of the plaintiffs; and that they could not have properly asked for removal of the attachment by a cancellation of the prohibitory order to D so long as they admitted that D had an interest in the attached property; and also that the plaintiffs could not have properly asked for any consequential relief in their suit, but that, when they instituted it, they were entitled, and, indeed, bound to ask for a declaration of their right, if only to prevent a purchaser at the sale, under the defendant's decree against D, from afterwards alleging that he had purchased without notice of the plaintiff's claim.—*Narayanrao Dâmodar Dâbhalkar v. Bâkrishna Mahadeo Gadre*, I. L. R., 4 Bom. 529.

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the

day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lall Pooree v. Shib Pershad Madi*, I. L. R., 7 Cal. 34.

M.S.C.C. 275. If the amount decreed with costs, and all charges and expenses resulting from the attachment of any property, be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, and other shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

276. When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

AN attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment.—*Soobhul Chunder Paul v. Nitye Churn Bysack*, I. L. R., 6 Cal. 664.

A RENEWAL of mortgage already existing on the property prior to attachment, which does not enhance the charge, is not an alienation within the meaning of s. 276 of the Code of Civil Procedure.—*Mahadevappa v. Srinivasa Rau* and another, I. L. R., 4 Mad. 417.

WHERE certain immoveable property having been attached, the execution-case was subsequently struck off the file, and the judgment-debtor applied again for attachment of the same property, *held*, looking to the particular circumstances of the case, that a private alienation of the property, after the date of such application, but before attachment, was not void under the provisions of s. 240 of Act VIII. of 1859. The principle of the High Court's decision in *Ahmed Hossain Khan v. Muhammed Azeem Khan* (H. C. R., N. W. P., 1869, p. 51) followed.—*Zaid-unnessa (Plaintiff) v. Jairangir (Defendant)*, I. L. R., 1 All. 616.

A PRIVATE alienation of property under attachment is void, under s. 276 of the Civil Procedure Code, "as against all claims enforceable under the attachment".

only. *Held*, therefore, where property attached in execution of a decree was alienated, and was, after such alienation, again attached, the first attachment having expired, and was brought to sale in pursuance of the second attachment, and the purchaser sued for possession of the property, claiming on the ground that the alienation of the property was void under the provisions of s. 276, that as no claim was enforced or was enforceable under the first attachment, under which the property was alienated, but the purchaser was claiming under the second attachment, such alienation could not be assailed under the provisions of s. 276.—*Gobind Singh v. Zalin Singh*, I. L. R., 6 All. 33.

By agreement between L and Q, the parties to a suit, the matters in difference between them were referred to arbitration. An award was made directing that L should transfer certain property to Q by way of sale. Between the day the award was made and the day a decree was made in accordance with the award such property was attached in execution of a decree against L. After the attachment L, in compliance with the decree made in accordance with the award, executed a conveyance of such property to Q. *Held* by the Full Bench (affirming the decision of *Straight, J.*, and reversing that of *Spankie, J.*) that such conveyance was not a "private alienation" in the sense of s. 276 of Act X. of 1877, and was therefore not void under that section as against a claim enforceable under such attachment.—*Qurban Ali v. Ashraf Ali*, I. L. R., 4 All. 219.

CERTAIN land was attached in the execution of a decree in the manner required by s. 235 of Act VIII. of 1859, but a copy of the order of attachment was not, as required by s. 239 of that Act, fixed up in a conspicuous part, or in any part at all, of the Court-house of the Court executing the decree, nor was it sent to or fixed up in the office of the Collector of the district in which the land was situated. Subsequently to the attachment of the land, the judgment-debtor privately alienated it by sale. *Held* that as the attachment had not been made known as prescribed by law, the provisions of s. 240 of Act VIII. of 1859 did not apply, and the sale was not null and void. *Indarchander v. The Agra and Masterman's Bank* (10 W. R. 264; S. C., 1 B. L. R., S. N., xx.) followed.—*Nur Ahmad (Defendant) v. Altaf Ali (Plaintiff)*, I. L. R., 2 All. 58.

A SUIT on a mortgage foreclosed under Reg. XVII. of 1806, s. 8, comprising property attached before the date of the mortgage under s. 81 and the following sections of Act VIII. of 1859, was brought against the purchaser of the attached property, which had been sold under the decree obtained by the attaching creditor. The defence was, that the mortgage, falling within the provisions of s. 240 of the Act, was void as against the attaching creditor and those claiming under him. For the mortgagee it was contended that the attachment could not prevail, it not having been proved affirmatively that the requirements of s. 239, relating to the intimation of the attachment, had been complied with. *Held* that this objection to the validity of the attachment could not be raised for the first time on this appeal, even if it was not rather for the mortgagee, seeking to deprive the attaching creditor of his possession, to prove the non-observance of the formalities in question. *Seemle*.—A re-attachment of property after decree does not imply an abandonment of an attachment obtained before decree.—*Ramkrishna Das Surrowji v. Surfunnissa Begum*, I. L. R., 6 Cal. 129.

APPLICATION was made for the attachment in execution of a decree of a maufi holding belonging to the judgment-debtor. The numbers and areas given in such application as the numbers and areas of the lands comprised in such holding were the numbers and areas of certain revenue-paying lands, and were not the numbers and areas of any lands held as maufi by the judgment-debtor. The order of attachment described the property as described in the application for attachment. The judgment-debtor having alienated by sale a maufi holding belonging to him, the decree-holders sued to have such alienation set aside as void under the provisions of s. 276 of Act X. of 1877. *Held* that, having regard to the description given in the application for attachment and the order of attachment, it could not be said that the maufi holding alienated by the judgment-debtor was under attachment at the time of the alienation, and its alienation was therefore not void under s. 276 of Act X. of 1877. *Held* also that the material misdescription of the property in this case in the order of attachment protected the alienees, who were *bonâ fide* purchasers, from

having the alienation set aside as void under s. 276, as the attachment could not, under the circumstances, be held to have been "duly intimated and made known," as required by that section.—*Gumani (Plaintiff) v. Hardwar Pandey and others (Defendants)*, I. L. R., 3 All. 698.

THE title obtained by the purchaser on a private sale of property in satisfaction of a decree differs from that acquired upon a sale in execution. Under a private sale, the purchaser derives title through the vendor, and cannot acquire a title better than his. Under an execution-sale, the purchaser, notwithstanding that he acquires merely the right, title, and interest of the judgment-debtor, acquires that title, by operation of law, adversely to the judgment-debtor, and freed from all alienations and incumbrances effected by him after the attachment of the property sold. In 1858, the respondent obtained a decree against B. In 1863, in satisfaction thereof, he caused to be attached a decree for mesne-profits made in favour of B against the appellants in 1860. In May, 1865, the respondent obtained an order for the sale thereof; but instead of proceeding to execution-sale, he purchased, in 1866, the whole of the mesne-profits due under the decree of 1860 by private sale from B. Meanwhile, in September, 1865, an order of Court had been made, between B and the appellants, on their consent (but without the respondent being a party to it), whereby the decree for mesne-profits was set off, *pro tanto*, against a prior decree for a larger amount, which the appellants had obtained against B. Held that the sale of 1866, having been a private one, and not in process of execution, the respondent only obtained such title as B had in the decree of 1860—*viz.*, a title subject to the effect of the order of September, 1865.—*Dinendro Nath Sannial and another (Defendants) v. Ram Kumar Ghose and others (Plaintiffs)*; *Tarak Chander Bhattacharji v. Baikoonth Nath Sannial and others*, I. L. R., 7 Cal. 107.

M.S.C.C.

277. If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Court may direct coin or currency-notes attached to be paid to party entitled.

M.S.C.C.

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Postponement of sale.

WHERE a person whose property has been attached in execution of a decree against another person, and whose claim under s. 246 of Act VIII. of 1859 has been rejected, brings a suit under the provisions of s. 247 of Act VIII. of 1859, it is no objection to that suit that, previously to the filing thereof, the decree (in execution of which the property had been attached) was satisfied by the judgment-debtor, and the property released from attachment.—*Sreeputty Mirdha v. Kartick Singha*, I. L. R., 9 Cal. 10.

UNDER ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that

there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary.—*Kalytara Chowdharin v. Ramcoomar Goopta*, I. L. R., 7 Cal. 466.

AN OBJECTION was made to the attachment of certain property in the execution of a decree by the judgment-debtor, on the ground that such property was in his possession, not as his own property, but on account of an endowment. This objection was one of the nature to be dealt with under Act X of 1877, s. 278 and the following sections. The Court executing the decree made an order against the decree-holder releasing the property from attachment. *Held* that such order was not appealable, the fact that the objection was made by the judgment-debtor notwithstanding, and the decree-holder's proper remedy was to institute a suit under Act X. of 1877, s. 283.—*Shankar Dial v. Amir Haidar*, I. L. R., 2 All. 752.

A DECREE-HOLDER, by a prohibitory order issued under Act X. of 1877, s. 268, attached a debt due to his judgment-debtor. This person, served with the order, applied under s. 278 to have the attachment removed. *Held* that the application could not be entertained under s. 278, that section having no application to the case; but that, before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property, of which sale is sought, is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale.—*Harilal Amthabhai v. Abhesang Meru*, I. L. R., 4 Bom. 323.

THE holders of a taluq hypothecated certain other property belonging to them as security for the rent. A decree for rent was obtained against them. Prior to attachment, the taluqdars assigned their interest in eight annas of the hypothecated property to A, and made a mourosi lease of the remaining eight annas to him. The decree-holder then obtained an order for summary sale for the rent due for 1876-77. She then attempted to sell the property hypothecated to her. An objection by A was allowed. A regular suit was then instituted by the decree-holder against A, and it was declared that she was, after selling the taluq, entitled to sell the hypothecated property. The decree-holder again attempted to execute her rent-decree by attaching and selling the hypothecated property, and an objection by A was disallowed. *Held* that no appeal lay from the order disallowing the objection, as A could not be considered to be a 'representative' of the taluqdars within the meaning of cl. 244, cl. c, of the Civil Procedure Code, and was, therefore, debarred from appealing under ss. 278 and 283.—*Rashbehary Mookhopadhyaya v. Maharani Surnomoyee*, I. L. R., 7 Cal. 403.

A AND B attached in execution of their decree property of C and his two brothers, their judgment-debtors. Subsequently D obtained a decree against C alone, and on the 11th January, 1884, applied for attachment of the one-third share of C in the property attached by A and B, which belonged to C and his two brothers jointly. No order was on that date passed on the application. On the 14th January, 1884, E purchased from C his one-third share in the attached properties, and the purchase-money was, by arrangement between the brothers, applied in satisfying the debt due to A and B. On the 28th January, 1884, an order was passed on the application of the 11th January, 1884, granting the attachment asked for by D. And on the 23rd April, 1884, E preferred his claim to the one-third share purchased by him, and which had been since the purchase attached by D. The claim was disallowed on the ground that E had no title to the property, he having purchased whilst the property was under attachment. *Held* on appeal that the Judge should have, in accordance with s. 280 of the Code of Civil Procedure, confined himself to determining whether or no the property was in the possession of E on his own account at the time that D attached the property.—*Koylash Chunder Sen v. Koylash Chunder Chakrabarti*, I. L. R., 10 Cal. 1057.

279. The claimant or objector must adduce evidence to show that at M.S.C.C.

Evidence to be adduced the date of the attachment he had some interest
by claimant. in, or was possessed of, the property attached.

AN ORDER striking off an objection to the attachment of property attached in execution of decree for default of prosecution is not "conclusive" as regards the right which the objector claimed to the property, within the meaning of s. 283 of Act X. of 1877. *Held*, therefore, where a person objected to the attachment of certain moveable property attached in execution of a decree, claiming it as his own, and his objection was struck off for default of prosecution, that such person might sue for damages for the wrongful attachment of such property without suing to establish the right which he claimed thereto.—*Kallu Mal (Defendant) v. Brown (Plaintiff)*, I. L. R., 3 All. 504.

M.S.C.C.

280. If, upon the said investigation, the Court is satisfied that, for

Release of property from the reason stated in the claim or objection, attachment. such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

S. 238 does not constitute an exception to the procedure laid down by s. 545. Where property has been released from attachment under s. 280, and subsequently declared liable to attachment by a decree against which an appeal is pending, a sale of such property before the final result of the appeal is not illegal by virtue of the provisions of s. 283.—*Fathula v. Muniyappa*, I. L. R., 6 Mad. 98.

AN OBJECTION to the attachment of property attached in execution of a decree was allowed, the decree-holder being ordered to pay the costs of the objector. The decree-holder thereupon brought a suit to contest the order allowing the objection. He did not seek in this suit relief in respect of the costs. He obtained a decree setting aside the order allowing the objection. He then applied to the Court which had made the order to order a refund of the amount of the costs which had been paid to the objector. *Held* that the application being regarded as one with regard to a portion of an order made under s. 280 of the Civil Procedure Code, the Court was *functus* in the matter, and could not make or enforce such an order as was sought for; and that its order disallowing the application was not appealable, as it was not one made under s. 244, and if taken to be one passed with reference to s. 280, an appeal was barred by s. 283.—In the matter of the Petition of *Raghu Nath Das v. Badri Prasad*, I. L. R., 6 All. 21.

In a suit upon a mortgage upon a house, one of the defendants alleged in his written statement that he had purchased the house at an auction-sale in execution of a decree against his co-defendants, but that he had since sold and conveyed the same to A, who had been put into and had held possession from the time of the sale to her, and further that the mortgage was collusive. A was not made a party to the suit. The plaintiff obtained a decree, and proceeded to execute it by attachment and sale of the house. A thereupon objected that the house was not liable to be attached and sold in execution of a decree in a suit to which she was not a party, and alleged that it had been purchased and held by her prior to the suit, and that the mortgage-bond was fraudulent and collusive. The Munsif dismissed her petition, on the ground that she was bound by the decree, her vendor having been made a party to the suit. *Held* that the Munsif was bound to have investigated her claim according to the provisions of ss. 278—280 of Act X. of 1877.—*Mussamat Jameela (Petitioner) v. Lachman Pandey (Opposite party)*, 4 Cal. Law Rep. 47.

S. 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution-proceedings, to bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court, or in the Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced. Where goods have been illegally seized and

sold in execution, a suit by the owner thereof against the purchaser for the goods or their value will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court. A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code will not lie in the Small Cause Court.—*Shiboo Narain Singh v. Mudden Ally*, and *Natabor v. Kalidass Pal*, I. L. R. 7 Cal. 608.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Disallowance of claim to release of property attached.

A suit under s. 283 of the Civil Procedure Code by a party against whom an order under s. 281 has been passed to establish his right to moveable property attached in execution of a decree passed by a Civil Court, and for such property, the same being less than Rs. 500 in value, is not a suit cognizable in a Court of Small Causes.—*Iláhi Baksh v. Sita*, I. L. R., 5 All. 462.

THE holder of a decree against a firm caused certain property to be attached in execution of the decree as the property of the firm. One of the partners in the firm objected to the attachment, on the ground that such property was not the property of the firm, but was his private property. The Court disallowed the objection, whereupon such partner appealed from the order disallowing the objection. *Held* that such order was not one under s. 244 (c) of Act X. of 1877, but under s. 281, and was therefore not appealable.—*Abdul Rahman v. Muhammad Yar*, I. L. R., 4 All.

THE heirs of the deceased obligor of a bond were sued thereon on the ground that they were in possession of the property of the deceased, and a decree was made in this suit for the recovery of the amount claimed "from the property of the deceased." In execution of this decree the plaintiff caused certain property to be attached as belonging to the deceased. The defendants objected to the attachment on the ground that the property belonged to them. The Court executing the decree proceeded to investigate this objection, and, finding that the property did not belong to the defendants, but to the deceased, disallowed it. *Held* that the proceedings upon such objection were taken under s. 281 of the Civil Procedure Code, and the order disallowing it was therefore not appealable.—*Awadh Kuari v. Raktu Tiwari*, I. L. R., 6 All. 109.

S. 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution-proceedings, to bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court, or in the Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced. Where goods have been illegally seized and sold in execution, a suit by the owner thereof against the purchaser for the goods or their value will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court. A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code will not lie in the Small Cause Court.—*Shiboo Narain Singh v. Mudden Ally*, and *Natabor v. Kalidass Pal*, I. L. R., 7 Cal. 608.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien,

Continuance of attachment subject to claim of incumbrancer.

AN attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment.—*Soobhul Chunder Paul v. Nitye Churn Bysack*, I. L. R., 6 Cal. 664.

M.S.C.C. 283. The party against whom an order under section 280, 281, or 282, is passed, may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit (if any), the order shall be conclusive.

A SUIT under s. 283 of the Civil Procedure Code by a party against whom an order under s. 281 has been passed to establish his right to moveable property attached in execution of a decree passed by a Civil Court, and for such property, the same being less than Rs. 500 in value, is not a suit cognizable in a Court of Small Cause.—*Ilāhi Bakhsh v. Sita*, I. L. R., 5 All. 462.

S. 283 does not constitute an exception to the procedure laid down by s. 545. Where property has been released from attachment under s. 280, and subsequently declared liable to attachment by a decree against which an appeal is pending, a sale of such property before the final result of the appeal is not illegal by virtue of the provisions of s. 283.—*Fathula v. Muniyappa*, I. L. R., 6 Mad. 98.

A SUIT brought by a defeated claimant, under Act X. of 1877, s. 283, to establish his right to, and to recover possession of, certain moveable property attached in execution of a decree of a Small Cause Court, is within the jurisdiction of, and must therefore, under Act XI. of 1865, s. 12, be instituted in, a Small Cause Court.—*Gordhan Pema v. Kasandās Balmukundās*, I. L. R., 3 Bom. 179.

IN a suit, under Act X. of 1877, s. 283, for a declaration of the proprietary right to certain immoveable property attached in the execution of a decree, the plaintiff asked that the property might be "protected from sale." *Held* that consequential relief was claimed in the suit, and court-fees were therefore leviable under Act VII. of 1870, s. 7, cl. 4 (c), and not under sch. 2, art. 17 (iii).—*Ram Prasad v. Sukh Dai*, I. L. R., 2 All. 720 (F. B.).

AN ORDER striking off an objection to the attachment of property attached in execution of a decree for default of prosecution is not "conclusive" as regards the right which the objector claimed to the property, within the meaning of s. 283 of Act X. of 1877. *Held*, therefore, where a person objected to the attachment of certain immoveable property attached in execution of a decree, claiming it as his own, and his objection was struck off for default of prosecution, that such person might sue for damages for the wrongful attachment of such property without suing to establish the rights which he claimed thereto.—*Kallu Mal (Defendant) v. Brown (Plaintiff)*, I. L. R., 3 All. 504.

AN OBJECTION was made to the attachment of certain property in the execution of a decree by the judgment-debtor, on the ground that such property was in his possession, not as his own property, but on account of an endowment. This objection was one of the nature to be dealt with under Act X. of 1877, s. 278 and the following sections. The Court executing the decree made an order against the decree-holder releasing the property from attachment. *Held* that such order was not appealable, the fact that objection was made by the judgment-debtor notwithstanding, and the decree-holder's proper remedy was to institute a suit under Act X. of 1877, s. 283.—*Shankar Dial v. Amir Haidar*, I. L. R., 2 All. 752.

THE L Bank advanced money to C, a Hindú governed by the Mitāksharā school of law upon mortgage of ancestral property. S, who was stated to be C's only son, joined in the mortgage. Subsequently the Bank obtained a decree against C and S for the amount due on the mortgage. On attempting to sell the mortgaged property other sons of C objected. This objection was allowed, and the mortgagees referred to a regular suit. They then sued all the sons of C to establish their lien on the mortgaged property. *Held* that the suit was maintainable under s. 283 of the Civil Procedure Code. *Nuthoo Lall Chowdhry v. Shoukee Lall* (10 B. L. R. 200), and *Mansmut Dhaxe v. Hurry Prasad* (unreported) distinguished.—*Sitanath Koer v. Land Mortgage Bank of India*, I. L. R., 9 Cal. 888.

THE holders of a taluq hypothecated certain other property belonging to them as security for the rent. A decree for rent was obtained against them. Prior to attachment, the taluqdars assigned their interest in eight annas of the hypothecated property to A, and made a mourosi lease of the remaining eight annas to him. The decree-holder then obtained an order for summary sale for the rent due for 1876-77. She then attempted to sell the property hypothecated to her. An objection by A was allowed. A regular suit was then instituted by the decree-holder against A, and it was declared that she was, after selling the taluq, entitled to sell the hypothecated property. The decree-holder again attempted to execute her rent-decree by attaching and selling the hypothecated property, and an objection by A was disallowed. *Held* that no appeal lay from the order disallowing the objection, as A could not be considered to be a 'representative' of the taluqdars within the meaning of s. 244, cl. c, of the Civil Procedure Code, and was, therefore, debarred from appealing under ss. 278 and 283.—*Rashbehary Mookhopadhyaya v. Maharani Surnomoyee*, I L. R., 7 Cal. 403.

A OBTAINED a money-decree against B, and attached certain lands in execution. C subsequently claimed possession of the property, which the Court thereupon released under s. 246, Act VIII. of 1859, leaving the plaintiff to establish his right by a regular suit brought within the prescribed period. A did not bring a suit within such period, but having, in the meantime, obtained a second decree against B, on a different cause of action, attached the lands a second time. The property was again released on C's application, and A now sued to have his right declared to attach the lands in execution of the second decree. The lower Courts dismissed the suit, holding that A could not raise in the second suit a question which he had the opportunity of raising, but did not, in the first suit. On appeal, *held* that the suit was maintainable, the principle of *res judicata* not applying. *Held* also that an order under s. 246 was invalid, where the question of possession, under that section, had not previously been investigated. Whether a correct conclusion had been arrived at in such investigation, was immaterial so far as concerned the validity of the order.—*Paidavenkamma v. Aiyangari Kenkatra Maiya*, 4 Ind. Jur. 397.

S. 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution-proceedings, to bring a suit to establish his rights, whatever they may be; but says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court or in the Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced. A person whose goods are illegally sold under an execution does not lose his right to them, although he may have claimed them unsuccessfully in the execution-proceedings. He may follow them into the hands of the purchaser or of any other persons, and sue for them or their value without reference to anything which has taken place in the execution-proceedings, except that, under art. 11, sch. ii., Act XV. of 1877, he must bring his suit within one year from the time when the adverse order in the execution-proceedings was made. Where goods have been illegally seized and sold in execution, a suit by the owner thereof against the purchaser, for the goods or their value, will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court. A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code will not lie in the Small Cause Court. *Ram Dhun Biswas v. Kefal Biswas* (10 W. R. 141), *Moozdeen Gazee v. Dinobundhoo Gossamee* (13 W. R. 99), and *Womesh Chunder Bose v. Muddun Mohan Sircar* (2 W. R. 44), discussed and explained.—*Shiboo Narain Singh (Plaintiff) v. Muddun Ally and others (Defendants)*, and *Natabar Nandi (Plaintiff) v. Kali Dass Pal and others (Defendants)*, I L. R., 7 Cal. 608.

PLAINTIFF in May, 1877, attached certain immoveable property of defendants, against whom he held an ordinary money-decree, and obtained an order for its sale in satisfaction of the decree. In July, 1877, defendant's infant sons presented a petition to the lower Court, praying to have two-thirds of the property, to which they were entitled, released. The petition did not allege that such infants were in possession, and, on the 18th July, was rejected by the lower Court, on the ground that possession of the property attached was in the defendant. The property was

sold; and plaintiff, who was the purchaser at the public sale, was put in possession, by order of the Court, on the 22nd October, 1877. On the 8th November, 1877, the defendant's minor sons presented a second petition to the same Court, purporting to be under s. 332, Act X. of 1877, upon which the Court, recording the evidence of the mother, that there had been joint possession, decided that the purchaser was not entitled to dispossess the infants, and cancelled the former delivery of possession. On appeal, the lower Appellate Court decided that the Munsif's order of the 18th July was final, and set aside that of the 21st November as *ultra vires*. Defendant's sons appealed, contending (1) that the Munsif's order of the 18th July, 1877, having been passed without any investigation, was not an order under s. 246, Act VIII. of 1859, and therefore not final; (2) that the petition filed on the 8th November should be treated as an application under s. 376, Act VIII. of 1859, for review of judgment made in the order of 18th July; and (3) that the Munsif's order of the 21st November was one which he had power to make in review of his order for execution passed on the 22nd October, 1877. *Held* (1) that the Munsif's order of the 18th July must be considered to have been under s. 246, Act VIII. of 1859, and final on the question of possession, except in respect of a regular suit; (2) that the application of the 8th November, treated as an application for review of judgment under s. 376, Act VIII. of 1859, was not admissible, it not having been made within the limited period (s. 377); (3) that the Munsif had no jurisdiction to review his order for execution of the 22nd October on the application of the infants, inasmuch as that order was not an order against them; and, under s. 623, they could not apply for a review of it, it not being open to them except by a regular suit (s. 283) to re-agitate the question of possession decided against them by the order of 18th July.—*Ruthna Mudali and another (by their mother Papemmal) v. Kakarla Ramayachetti*, 3 Ind. Jur. 264.

SUITS brought to set aside or to restore an attachment upon a house, in pursuance of the permission given in s. 246 of the Civil Procedure Code, may be regarded either "as suits to obtain a declaratory decree or order where consequential relief is prayed," so as to fall within s. 7, cl. iv., art. c of the Court Fees Act (VII. of 1870), or as suits to obtain or set aside a summary decision or order, in which case the stamp-duty payable would be that prescribed by art. 17, cl. i., sch. ii. of the Court Fees Act. The Court Fees Act being a fiscal enactment, it is the duty of the Courts to treat such suits as belonging to the latter class (it being the more favourable to the suitor), and to impose fees accordingly. Decisions under s. 246 of Act VIII. of 1859, as to the removal or retention of attachments, are "summary decisions or orders" within the meaning of art. 17, cl. i., sch. ii. of the Court Fees Act (VII. of 1870). The words "summary decision or order" in this clause of the Court Fees Act mean decision or order not made in a regular suit or appeal. The construction which has been given to these words, or nearly similar words, in the Limitation Acts (*e.g.*, Act IX. of 1871, sch. ii., art. 15, and Act XV. of 1877, sch. ii., art. 13), affords no guide to their construction in the Court Fees Act. When Acts are *in pari materia*, they may be treated as forming a Code, and may be read together; but when this is not so, the construction which has been put upon one cannot be relied upon as a guide to the construction of another. The valuation of suits, for the purpose of jurisdiction, is perfectly distinct from their valuation for the fiscal purpose of Court-fees. Therefore, Court Fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction. *Motichand Jaichand v. Dada Bhai Pestonji* (11 Bom. II. C. Rep. 186, 188, 189) explained: *Rāvloji Tamaji v. Dholapur Raghū* (I. L. R., 4 Bom. 123) dissented from by Westropp, C.J. A stamp of Rs. 10 is sufficient for the plaint or memorandum of appeal in a suit brought under s. 246 of Act VIII. of 1859 to restore an attachment upon a house which has been removed at the instance of an intervenient under that section. A person whose property was attached was not compelled to resort, in the first instance, to an application under s. 246 of the late Civil Procedure Code (Act VIII. of 1859). There was nothing to prevent him from commencing his litigation by a regular suit, if such were his pleasure. Clause viii. of s. 7 of the Court Fees Act (VII. of 1870) would apply to such a suit. The language of that section is not limited to suits to set aside any special kind of attachments on land. It is large enough to include suits brought, in pursuance of the permission given by s. 246 of Act VIII. of 1859, to set aside attachments on lands as well as other suits for that purpose brought independently

of that section. The term 'land' in cl. viii, s. 7 of the Court Fees Act, does not include a house. *Quere*.—Whether that clause includes all suits to set aside attachments upon land, or all such suits, except where the result of setting aside the attachment would be to alter or set aside a summary decision or order of any Civil Court not established by Letters Patent or of any Revenue Court? In order to enforce a decree which establishes a mortgage, and directs a sale of the mortgaged premises in satisfaction of the mortgage, it is not necessary to issue an attachment. If the decree contains, as it ought to contain, a direction for sale of the mortgaged premises, the proceeding under such a decree by attachment is unnecessary as well as expensive and dilatory. The direction for sale in the decree is in itself sufficient authority for the sale. That direction is founded on the specific lien or charge on the mortgaged premises created by the contract of mortgage, and not on the execution clauses in the Code of Civil Procedure.—*Dayachand Nemchand (Original Defendant), Appellant, v. Heimchand Dharamchand, deceased, his heir, his daughter Bai Vigli, and another (Original Plaintiffs), Respondents, I. L. R., 4 Bom. 515.*

284. Any Court may order that any property which has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same. M.S.C.O. (so far as relates to moveable property).

Power to order property attached to be sold and proceeds to be paid to person entitled.

285. Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property, and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached. M.S.C.O.

Property attached in execution of decrees of several Courts.

WHERE certain immoveable property which had been attached in execution of two decrees, one made by a Munsif, and the other by the District Court to which such Munsif was subordinate, was sold under the order of the Munsif, *held* (following in the matter of the Petition of Badri Prasad: *Badri Prasad v. Suran Lal, I. L. R., 4 All. 359*) that the sale was bad by reason of the Munsif's want of jurisdiction to order it.—*Aghore Nath v. Shama Sundari, I. L. R., 5 All. 615.*

WHERE property attached in execution of a decree of a Munsif's Court is, or becomes, subject to an attachment issued from a Subordinate Judge's Court, the holder of the decree in the Munsif's Court, in order to share rateably in the assets under s. 295 of the Code of Civil Procedure, must apply to the District Court to transfer his application to the subordinate Court. *Gopeenath Acharje v. Achcha Bibee (I. L. R., 7 Cal 553)* and *Jetha Madhavji v. Najerali Abhramji (I. L. R., 4 Bom. 472)* approved.—*Muttalagiri v. Muttayyar, I. L. R., 6 Mad. 357.*

THE provisions of s. 285 of the Code of Civil Procedure, 1882, apply to immoveable property. Where a house, while under an attachment issued by a Subordinate Judge's Court in execution of a decree, was sold in execution of another decree against the same judgment-debtor by the District Munsif's Court, and was then sold by the Subordinate Judge's Court, *held* that the sale by the District Munsif's Court was invalid by reason of the provisions of s. 285 of the Code of Civil Procedure, 1882.—*Muttakaruppan v. Mutturamalinga, I. L. R., 7 Mad. 47.*

A, who had obtained a decree in the Court of the Second Munsif of B in September, 1877, attached certain property within the jurisdiction which had been assigned to the Munsif by the District Judge under s. 18 of Act VI. of 1871. In the previous month, C, who had obtained a decree in the Court of the Additional Munsif of B (to whom jurisdiction had similarly been assigned), had attached the same property. The sale in execution of A's decree took place first, and A became the purchaser. A then objected in the Court of the Additional Munsif that the property

could not again be sold ; but his objection was over-ruled, and, two days subsequently, the property was again put up for sale in execution of C's decree, and he became the purchaser. A brought various suits against the tenants for arrears of rent, in which C intervened. *Held* that the jurisdictions of the Munsifs were confined to the particular limits assigned to them, and that, as the property was situate within the limits assigned to the Second Munsif, the Additional Munsif had no jurisdiction to attach or sell it, and that the attachment by C was made improperly and without jurisdiction. *Quære*.—Whether s. 285 of the Civil Procedure Code applies to immoveable property?—*Obhoy Churn Coondoo v. Golam Ali alias Noury Meah*, I. L. R., 7 Cal. 410.

CERTAIN immoveable property was attached in execution of a decree made by a Subordinate Judge, and also in execution of a decree made by a Munsif. These decrees were held by the same person, and the judgment-debtor was the same person. Such property was sold in execution of both decrees. On the application of the judgment-debtor, who brought into Court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale. Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale. *Per* Spankie, J.—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside. *Per* Oldfield, J.—That having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale ; but, inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere.—*Chunni Lal and others (Judgment-debtors) v. Debi Prasad and another (Auction-purchasers)*, I. L. R., 3 All. 356.

THE first mortgagee of certain immoveable property obtained a decree for the sale of the property, caused the property to be attached, and then ceased to prosecute the execution-proceedings. The second mortgagee then obtained a decree for the sale of the property, caused it to be attached and put up for sale, and purchased it himself. The first mortgagee then applied for the sale of the property, and the property was put up for sale, and was purchased by him. After the order for this sale was made, and before it took place, the judgment-debtor died, and the sale took place without his legal representatives being made parties to the execution-proceedings. The Courts which executed these decrees were of two different grades, the Court which executed the first mortgagee's decree being of the lower grade. In a suit by the first mortgagee against the second mortgagee for possession of the property, *held* that the sale to the first mortgagee was not invalid, with reference to the provisions of s. 285 of the Civil Procedure Code, because it had not been ordered and held by the Court of the higher grade, inasmuch as when such sale was ordered by the Court of the lower grade, the property was not under attachment in execution of the decree of the Court of the higher grade, that decree having been executed by the sale of the property, and therefore the provisions of that section were not applicable. *Badi Prasad v. Saran Lal* (I. L. R., 4 All. 359) distinguished. *Per* Oldfield, J., that there was nothing in the provisions of ss. 285 or 295 of the Civil Procedure Code to support the contention that the first mortgagee, after allowing the property to be sold, was debarred from enforcing execution of his decree against it, and was only entitled to look to the assets realized at the sale for the satisfaction of his decree. *Per* Oldfield, J., that the sale to the first mortgagee was not void because the judgment-debtor had died before it took place, and it took place without his legal representatives being made parties to the execution-proceedings, inasmuch as the provisions of s. 368 of the Civil Procedure Code were not applicable to the case of the death of a judgment-debtor, and there was nothing in s. 234, even if that section is applicable to a case where the judgment-debtor dies while execution is proceeding and after sale of his property has been ordered, to imply that the sale is absolutely void, if no legal representative has been brought on the record. *Dulari v. Mohun Singh* (I. L. R., 3 All. 759) and *Gulabdas v. Lakshman Narhar* (I. L. R., 3 Bom. 221) referred to. *Per* Straight, J., that there was no legal obligation

tion on the first mortgagee to resort to the procedure of s. 234 of the Civil Procedure Code, since the sale to the second mortgagee had passed to him the rights and interests of the judgment-debtor, and the legal representatives of the judgment-debtor had none of his property in their hands, and there is no provision in the Code of Civil Procedure which required the first mortgagee to make the second mortgagee a party to the proceedings in execution of the former's decree, and the latter could not have successfully objected to the sale in execution of that decree, and therefore that sale was not voided by the death of the judgment-debtor antecedent to its taking place.—*C. W. Stowell v. Ajudhia Nath*, I. L. R., 6 All. 255.

G.—Of Sale and Delivery of Property.

(a) General Rules.

286. Sales in execution of decrees shall be conducted by an officer M.S.C.C.

Sales by whom conducted, of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

WHERE a judgment-debtor died after his land had been attached, and the creditor brought the land to sale without making the representatives of the deceased parties to the proceedings, *held* that the sale was illegal, and must be set aside.—*Rāmāsāmi v. Bagirathi*, I. L. R., 6 Mad. 180.

A CIVIL Court, having power to issue execution on a decree, is competent, notwithstanding the absence of special provision in the Code, to refuse to confirm a sale in favour of a purchaser, who has, by the exercise of fraud and collusion with the execution-creditor, succeeded in being declared such purchaser at a depreciated value, although such sale may be without any material irregularity, within the meaning of the Code. An order confirming a Court-sale is not appealable under the Code.—*Subhu Rau v. Srinivasa Rau*, 4 Ind. Jur. 505.

287. When any property is ordered to be sold by public auction in M.S.C.C.

Proclamation of sales by execution of a decree, the Court shall cause a public auction. proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

- (a) the property to be sold;
- (b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government;
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

The High Court shall, as soon as may be after this Code comes

Rules to be made by High into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may, from time to time, alter any rules so made. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law. As regards his own Court

and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

IN THE execution of a decree ordering the sale of immoveable property it is not competent for the Court to refuse to sell it, because a stranger to the suit in which such decree was obtained, who is in possession of such property, impeaches the decree as having been obtained by fraud; the course open to him, if he wishes stay of execution, being to file a suit and obtain an injunction for that purpose.—*Purshottam v. Purshottam*, I. L. R., 8 Bom. 532

WHERE a sale in execution of a decree is postponed, whether indefinitely or to a fixed date, it is necessary, in the absence of an express arrangement between all the parties, that a fresh proclamation should be made giving notice of the day to which the sale has been postponed. It may be presumed, when the notice is wanting, that there has been an absence of bidders, from which alone substantial injury must probably have arisen to the judgment-debtor. *Shib Prokash Singh v. Sardar Doyal Singh* (I. L. R., 3 Cal. 544), *Okhoy Chunder Dutt v. Erskine* (3 W. R., Mis. 11) followed.—*Gopee Nath Dobey* (Judgment-debtor) *v. Roy LuchmEEPoot Singh Bahadur* and others (Decree-holders), I. L. R., 3 Cal. 542.

UPON an application to set aside a sale in execution of a decree on the ground of material irregularities in publishing and conducting it, it appeared that the sale-notification had not been fixed up in the Collector's office as required by s. 289 of Act X. of 1877; that no affidavit as to search having been made in the Registry Office with regard to incumbrances as required by s. 287 of the Act had been filed; and that the sale took place on, and not after, the thirtieth day from the publication of the notice; but it also appeared that the applicant had himself been present at the sale and had purchased the property, and it was not shown that any substantial injury had resulted from the irregularities. *Held* that there was no ground for setting aside the sale.—*Bandy Ali v. Madhub Chunder Nag* and others, I. L. R., 8 Cal. 932.

WHEN on an execution-sale there is a discrepancy between the conditions in the notification of what is to be sold and the certificate of what has been sold, the conditions in the notification are to be taken as of superior authority in dealing with the conflicting claims of innocent third parties, whose rights are affected by the variation. In execution of a decree for arrears of rent, an application was made for a sale of the tenure for the arrears of which the decree had been obtained. A notification was issued, purporting to be a sale-proclamation, under Act VIII. of 1859, s. 249, and in pursuance of that notification the sale of the right, title, and interest of the judgment-debtor took place. *Held* that the tenure did not pass by that sale, notwithstanding that the sale-certificate stated it was the tenure itself which had been sold.—*Uma Charun Sein* and another (Plaintiffs) *v. Gobind Chunder Mozuundar* and others (Defendants), 1 Cal. Law Rep. 460.

A CREDITOR obtained two decrees against his debtor, one being a mortgage decree to enforce his lien on certain property, and the other a simple money-decree. In execution of the second decree the property over which the judgment-creditor had a lien was sold, and was purchased by a third person. Subsequently, in execution of the first decree, at the instance of the judgment-creditor, this same property was advertised for sale, but on the auction-purchaser objecting, the judgment-creditor brought a suit against him to enforce his lien on the property in the hands of the auction-purchaser. *Held* that it lay on the plaintiff, in order to entitle him to recover in the suit, to show that the defendants purchased with notice of the lien. *Held* further that the fact that for some purpose at some time or other the judgment-creditor informed the Court of the mortgage is not evidence of notice on the auction-purchaser.—*Nursing Narain Singh v. Roghoobur Singh*, I. L. R., 10 Cal. 609.

A DECREE-HOLDER, by a prohibitory order issued under Act X. of 1877, s. 268, attached a debt due to his judgment-debtor. This person, served with the order, applied, under s. 278, to have the attachment removed. *Held* that the application could not be entertained under s. 278, that section having no application to the case;

but that, before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property, of which sale is sought, is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale.—*Harilal Amthabhai v. Abhesang Mern*, I. L. R., 4 Bom. 323.

CERTAIN immoveable property was put up for sale, under the provisions of Act X. of 1877, in execution of a decree for money, and was purchased by C, with notice that L held a decree enforcing a lien on such property. Subsequently L applied for the sale of such property in execution of his decree, and such property was put up for sale in execution of that decree, and was purchased by S. S sued, by virtue of such purchase, to recover possession of such property from C. *Held* that, inasmuch as under Act X. of 1877 what is sold in execution of a decree purports to be the specific property, and as C had purchased the property in suit with notice of the existing lien on it, and subject to its re-sale in execution of the decree in execution of which S had purchased it, what actually was sold in execution of that decree to S was such property, and S was entitled to possession of such property under such sale. Sales under Act VIII. of 1859 and Act X. of 1877 distinguished.—*Sheo Ratan Lal (Plaintiff) v. Chotey Lal (Defendant)*, I. L. R., 3 All 647.

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lal Pooree v. Shib Pershad Madi*, I. L. R., 7 Cal. 34.

288. No Judge or other public officer shall be answerable for any error, misstatement, or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

M.S.C.C. 289. The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached, and a copy thereof shall then be fixed up in the Court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

HELD that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale. *Mohunt Megh Lal Poorer v. Shib Pershad Madri* (I. L. R., 7 Cal. 34) dissented from.—*Rahchandrar Bahadur v. Kamta Prasad*, I. L. R., 4 All. 300.

UNDER ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary.—*Kalytara Chowdharin v. Ramcoomar Goppta*, I. L. R., 7 Cal. 466.

UPON an application to set aside a sale in execution of a decree on the ground of material irregularities in publishing and conducting it, it appeared that the sale-notification had not been fixed up in the Collector's office as required by s. 289 of Act X. of 1877; that no affidavit as to search having been made in the Registry Office with regard to incumbrances as required by s. 287 of the Act had been filed; and that the sale took place on, and not after, the thirtieth day from the publication of the notice; but it also appeared that the applicant had himself been present at the sale and had purchased the property, and it was not shown that any substantial injury had resulted from the irregularities. **Held** that there was no ground for setting aside the sale.—*Bandy Ali v. Madhub Chunder Nag and others*, I. L. R., 8 Cal. 932.

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. **Held** that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the

mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lall Pooree v. Shib Pershad Madi*, I. L. R., 4 Cal. 34.

290. Except in the case of property mentioned in the proviso to M.S.C.C.

section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the Court-house of the Judge ordering the sale.

HELD that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale. *Mohunt Megh Lall Pooree v. Shib Pershad Madi* (I. L. R., 7 Cal. 34) dissented from.—*Rahchandar Bahadur v. Karnta Prasad*, I. L. R., 4 All. 300.

AN APPLICATION made on the day of sale by the judgment-debtor, that a part only of his property may be sold instead of the entirety, cannot be considered such a "consent" as, by virtue of s. 290 of Act X. of 1877, would do away with the necessity of a proclamation for sale being issued thirty days before the day fixed for sale. Where successive postponements of the day of sale have been made, but the last of these is made by the Court on its own motion, without any application for postponement of sale being made on the part of the judgment-debtor (although such postponement might be for his benefit), a strict compliance with the rule that thirty days must elapse between the proclamation and the actual day of sale is requisite. *Ray Gauri Nath Sahay v. Shah Fucker Chand* (18 W. R. 347) distinguished. Where a decree for sale of certain property was obtained under Act VIII. of 1859, and the property was sold, but an order was passed after the new Code of Procedure Act X. of 1877, had come into force setting aside such sale, *held* that an appeal would lie from such an order under Act X. of 1877. *Runjit Singh v. Meherban Koer* (I. L. R., 3 Cal. 662) followed.—*Hurbans Sahay and others (Purchasers) v. Bhim Pershad Singh and others (Judgment-debtors)*, I. L. R., 5 Cal. 259.

If, when property has been attached in execution of a decree, and prior to sale, an application is made for execution of another decree so that the second decree-holder may participate under s. 295 of the Civil Procedure Code in the assets realized, portion of the property attached be sold in the first instance, then, as both decrees are entitled to participate rateably, if the amount realized is not sufficient to satisfy both decrees, although sufficient to pay off the former, a further sale may be held. As to reports of the Nazir and the peons of the Court, see *Obhoy Churn Seek v. Erskine* (3 W. R. Misc. 11), *Sreenath Thakoor v. Watson* (4 W. R. Misc. 41), *Shibkoondan Lal v. Noor Ali* (10 W. R. 3). Under s. 290 it seems intended that the copy of the proclamation should not be "fixed up in the Court-house" until the proclamation itself has been made under s. 274 of the Civil Procedure Code. When properties put up for sale in execution of a decree are subject to any incumbrance, the proclamation ought to specify the amount of the debt outstanding. An omission to specify such amount affords strong *prima facie* ground, where a mortgagee in possession is himself the purchaser, for believing that an inadequate price has been obtained.—*Megh Lall Pooree Mahant (Judgment-debtor), Appellant, v. Mohand Dutt Jha and others (Decree-holders), Respondents*, 8 Cal. Law Rep. 369.

CERTAIN immoveable property was, on the 15th February 1879, notified for sale under a decree of a Civil Court on 15th March following, so that only 29, instead of

M.S.C.C. 289. The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached, and a copy thereof shall then be fixed up in the Court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

Held that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale. *Mohunt Megh Lal Pooree v. Shib Pershad Madi* (I. L. R., 7 Cal. 34) dissented from.—*Rahchandrar Bahadur v. Kamta Prasad*, I. L. R., 4 All. 300.

UNDER ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary.—*Kalyata Chowdharin v. Ramcoomar Goopta*, I. L. R., 7 Cal. 466.

UPON an application to set aside a sale in execution of a decree on the ground of material irregularities in publishing and conducting it, it appeared that the sale-notification had not been fixed up in the Collector's office as required by s. 289 of Act X. of 1877; that no affidavit as to search having been made in the Registry Office with regard to incumbrances as required by s. 287 of the Act had been filed; and that the sale took place on, and not after, the thirtieth day from the publication of the notice; but it also appeared that the applicant had himself been present at the sale and had purchased the property, and it was not shown that any substantial injury had resulted from the irregularities. *Held* that there was no ground for setting aside the sale.—*Bandy Ali v. Madhub Chunder Nag and others*, I. L. R., 8 Cal. 932.

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of his insolvency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the

mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lal Pooree v. Shib Pershad Madi*, I. L. R., 4 Cal. 34.

290. Except in the case of property mentioned in the proviso to M.S.C.O.

section 269, no sale under this chapter shall,

Time of sale.

without the consent in writing of the judge-

ment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the Court-house of the Judge ordering the sale.

HELD that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale. *Mohunt Megh Lal Pooree v. Shib Pershad Madi* (I. L. R., 7 Cal. 34) dissented from.—*Rahchandrar Bahadur v. Kamta Prasad*, I. L. R., 4 All. 300.

AN APPLICATION made on the day of sale by the judgment-debtor, that a part only of his property may be sold instead of the entirety, cannot be considered such a "consent" as, by virtue of s. 290 of Act X. of 1877, would do away with the necessity of a proclamation for sale being issued thirty days before the day fixed for sale. Where successive postponements of the day of sale have been made, but the last of these is made by the Court on its own motion, without any application for postponement of sale being made on the part of the judgment-debtor (although such postponement might be for his benefit), a strict compliance with the rule that thirty days must elapse between the proclamation and the actual day of sale is requisite. *Ray Gauri Nath Sahay v. Shah Fukeer Chand* (18 W. R. 347) distinguished. Where a decree for sale of certain property was obtained under Act VIII. of 1859, and the property was sold, but an order was passed after the new Code of Procedure, Act X. of 1877, had come into force setting aside such sale, *held* that an appeal would lie from such an order under Act X. of 1877. *Ranjit Singh v. Meherban Koor* (I. L. R., 3 Cal. 662) followed.—*Harbans Sahay and others (Purchasers) v. Bhairi Pershad Singh and others (Judgment-debtors)*, I. L. R., 5 Cal. 259.

IF, when property has been attached in execution of a decree, and prior to sale, an application is made for execution of another decree so that the second decree-holder may participate under s. 295 of the Civil Procedure Code in the assets realized, portion of the property attached be sold in the first instance, then, as both decrees are entitled to participate rateably, if the amount realized is not sufficient to satisfy both decrees, although sufficient to pay off the former, a further sale may be held. As to reports of the Nazir and the peons of the Court, see *Obhoy Churn Seek v. Erskine* (3 W. R. Misc. 11), *Sreenath Thakoor v. Watson* (4 W. R. Misc. 41), *Shibkoondan Lal v. Noor Ali* (10 W. R. 3). Under s. 290 it seems intended that the copy of the proclamation should not be "fixed up in the Court-house" until the proclamation itself has been made under s. 274 of the Civil Procedure Code. When properties put up for sale in execution of a decree are subject to any incumbrance, the proclamation ought to specify the amount of the debt outstanding. An omission to specify such amount affords strong *prima facie* ground, where a mortgagee in possession is himself the purchaser, for believing that an inadequate price has been obtained.—*Megh Lal Pooree Mahant (Judgment-debtor), Appellant, v. Mohand Dutt Jha and others (Decree-holders, Respondents)*, 8 Cal. Law Rep. 369.

CERTAIN immoveable property was, on the 15th February 1879, notified for sale under a decree of a Civil Court on 15th March following, so that only 29, instead of

30, days elapsed between the day of the sale and the notification. The sale having taken place, the execution-debtor applied to the Deputy Commissioner to set it aside upon the ground that the sale was illegal, the requirements of Act X. of 1877, s. 290, being essential to its validity. Upon that ground the sale was set aside as illegal by the Deputy Commissioner. On appeal, the Judicial Commissioner reversed this decision, on the ground that the fact of the sale having taken place 29 instead of 30 days after the notification was merely an irregularity, and that, as the execution-debtor had not shown that he had suffered any damage from the irregularity, the sale ought to be confirmed. An application was then made to a Division Bench of the High Court to set aside the order of the Judicial Commissioner confirming the sale, upon the ground that it was manifestly erroneous; and the Division Bench referred the question to a Full Bench: Whether, assuming the requirements of s. 290 to be essential to the validity of a sale, the High Court had any power, either under 24 & 25 Vic., c. 105, s. 15, or Act X. of 1877, s. 622, as amended, to set aside the Judicial Commissioner's order? *Held* by the Full Bench, without answering the question referred, that, assuming the requirements of s. 290 to be essential, the High Court had a right, under its summary powers, to set aside the sale itself, notwithstanding (and apart from the question whether it would set aside) the order of the Judicial Commissioner.—*In re Bhekraj Keori*, I. L. R., 5 Cal. 878 (F. B.).

M.S.C.C.

291. The Court may, in its discretion, adjourn any sale under this

chapter (other than a sale by the Collector) to

a specified day and hour, and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment: Provided that when the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-

debtor consents to waive it. Every such sale of debt and costs, or on proof of payment.

shall be stopped if, before the lot is knocked down, the debt and cost (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before the date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give

evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment debtor, though he was justified under s. 291 in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lall Pooree v. Shib Pershad Madi*, I. L. R., 7 Cal. 34.

292. No officer having any duty to perform in connection with any M.S.C.O.

Officers concerned in execution-sales not to bid for or buy property sold. sale under this chapter shall, either directly or indirectly, bid for, acquire, or attempt to acquire, any interest in any property sold at such sale.

293. The deficiency of price (if any) which may happen on a re-sale M.S.C.O.

Defaulting purchaser answerable for loss by re-sale. sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale, and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money. (so far as relates to re-sales under s. 297).

THE provisions of s. 293, Act X of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immovable property, and also to re-sales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Kooer*, I. L. R., 7 Cal. 337.

AT A sale in execution of a decree the property was knocked down to a bidder at Rs. 260. The bidder was unable to make a deposit, and the property was immediately put up for sale and re-sold for Rs. 50. *Held* that the judgment-debtor had sustained such substantial injury as would justify the Court in setting aside the sale, notwithstanding that the judgment-debtor might, under s. 293 of the Civil Procedure Code, have sued to recover the difference between the original bid and the price at which the property was sold.—*Beepen Chunder Shickdar v. Pureshbnath Biswas*, I. L. R., 9 Cal. 98.

WHERE portion of the property of a judgment-debtor has been sold in execution for a sum sufficient to satisfy the decree, the Court is not justified, on default being made by the purchaser, in directing the sale of any further portion of the debtor's property, it being open either to the judgment-creditor or the judgment-debtor to apply that the balance due upon the decree after re-sale of the portion already sold should be realized from the defaulter.—*Jay Chunder Biswas* (Judgment-debtor), Appellant, *v. Kali Kishore Dey Sircar and others* (Decree-holders), Respondents, 8 Cal. Law Rep. 41.

WHERE property has been sold under a decree, and the purchaser at the execution-sale has made default in paying the purchase-money, the remedy of the judgment-creditor is not limited by s. 254 of Act VIII. of 1859 to a suit against the defaulting purchaser. He is entitled to recover the balance of his debt from his judgment-debtor, who may, perhaps, have his remedy against the defaulting purchaser. *Jooobraji Singh v. Gaur Buksh Lal* (7 Cal. W. R., Civ. Rul., 110) dissented from.—*Anandrabapuji* (Original Plaintiff), Appellant, *v. Sekhbabu and others* (Original Defendants), Respondents, I. L. R., 2 Bom. 562.

A PURCHASER of property at a Court-sale who fails to pay the deposit (25 per cent. on the purchase-money) directed to be paid by s. 306 of the Civil Procedure Code is a defaulting purchaser within the meaning of s. 293 of that Code, and liable, as such, to make good any deficiency of price which may happen on a re-sale, and all expenses attending the same. A sale in which a decree-holder himself, or some other

person for him, without the permission of the Court first obtained, becomes the purchaser, is not *ispo facto* void: it is a good sale unless and until set aside by the Court under the provisions of s. 294 of the Civil Procedure Code.—*Javberbai* (Applicant) *v.* *Haribbai* (Opponent), I. L. R., 5 Bom. 575.

M.S.C.C.

Decree-holder not to bid for or buy property without permission.

If decree holder purchase, amount of decree may be taken as payment.

294. No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

A OBTAINED a money-decree against B and others jointly for Rs. 112; and, in consideration of a payment of Rs. 25 made by B, agreed to release B from all liability under the decree. This payment was not certified to the Court, and A afterwards, in execution of the decree, had certain immoveable property belonging to B put up for sale, and this property he purchased himself. *Held* that a suit would lie by B to set aside the sale and to recover the property from A.—*Ishan Chunder Bandopadhyaya v. Indronarain Gossami*, I. L. R., 9 Cal. 788.

A PURCHASE by the son of a decree-holder, undivided in interest from his father, is a purchase by the decree-holder within the meaning of s. 294 of Act X. of 1877 as it stood previously to its amendment by Act XII. of 1879, and is absolutely void, if the purchase were made with funds which were the joint property of the father and son. In the absence of evidence to the contrary, the legal presumption would be that the funds were joint property.—*Narayan Deshpande* (Original Applicant), Appellant, *v.* *Anaji Deshpande* (Original Opponent), Respondent, I. L. R., 5 Bom. 130.

WHERE there are competing decree-holders, who have applied for execution of their decrees, s. 294 of the Civil Procedure Code (Act X. of 1877) must be taken as subject to the provisions of s. 295, so that the decree-holder who has been permitted under the former section to purchase the property in execution of his own decree must share the proceeds of the sale rateably with such competing decree-holders, and will not be allowed to set-off the purchase-money against the amount due to him on his decree.—*Shrinivas v. Radhabai and Manjapa*, I. L. R., 6 Bom. 571.

THE holder of a decree, in execution of which property is sold, is absolutely bound under Act X. of 1877, s. 294, to have express permission from the Court before he can purchase the property; and whether this objection is taken and pressed or otherwise, a sale to him is invalid, unless he has got explicit permission. The use, at a sale, of language by an intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property, is a "material irregularity," sufficient to render the sale invalid, under s. 311 of the same Act.—*Rukhinee Bullub v. Brojonath Sircar*, I. L. R., 5 Cal. 308.

THE holder of a decree for unascertained mesne-profits, who has applied to the Court to ascertain the amount thereof, and to attach immoveable property under s. 255 of the Code of Civil Procedure, comes within the purview of s. 295, and is entitled to share rateably with the attaching creditor in the assets realized. S. 294 must be read with s. 295, and to give effect to both sections the receipt to be given by the decree-holder, who has obtained leave to bid from the Court, and has purchased

the property sold, can only be accepted for so much of the judgment-debt as the assets applicable to its discharge may suffice to satisfy.—*Viraragava Ayyangar v. Varada Ayyangar*, I. L. R., 5 Mad. 123.

A MORTGAGEE having obtained a decree, declaring his lien on certain property, put up for sale, in execution of this decree, the mortgaged property. The decree-holder asked for, but was refused, leave to bid at the sale, but, notwithstanding such refusal, purchased the property in the name of a third person. Possession under the sale was opposed, and the decree-holder as purchaser brought a suit for possession of the property. The defendants contended that, inasmuch as the plaintiff (decree-holder) had been refused leave to bid at the sale, his purchase could not be enforced. *Held* that the plaintiff had been guilty of an abuse of the process of the Court in bidding at the sale and buying the property benami, and that the sale, therefore, ought not to be enforced.—*Mahomed Gazee Chowdhry v. Ram Loll Sen*, I. L. R., 10 Cal. 757.

295. Whenever assets are realized by sale or otherwise in execution M.S.C.C.

Proceeds of execution-sale of a decree, and more persons than one have, to be divided rateably prior to the realization, applied to the Court by among decree-holders. which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons :

Provided as follows :—

(a) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale :

Proviso where property is sold subject to mortgage.

(b) when any property is liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold :

(c) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

Proviso.

first, in defraying the expenses of the sale ;
secondly, in discharging the interest and principal-money due on the incumbrance ;

thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances (if any) ; and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

AN attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment.—*Soobhul Chunder Paul v. Nitye Churn Bysack*, I. L. R., 6 Cal. 664.

HELD that ss. 266 and 295 must be read together, and that an ordinary judgment-creditor is not entitled, under s. 295, to a rateable proportion of the assets realized by the sale of such house or building, under a decree obtained by another creditor for rent due to him in respect of the said house or building.—*Mániklal Venilál v. Lakha and Mánsang*, 1. L. R., 4 Bom. 429.

WHERE property belonging to A has been attached under a decree, and other decree-holders than the attaching creditor have applied before realization of assets to participate in the sale-proceeds, and amongst them a creditor who has obtained a decree against A and B, such latter creditor is entitled, under s. 295, to share in the proceeds of the sale of A's property.—*Sumbhoo Nath Poddar v. Luckynath Dey*, 1. L. R., 9 Cal. 920.

MONEYS paid into Court by sale or otherwise in execution of a decree are assets from the moment of their payment into Court, and are available, under s. 295 of the Code of Civil Procedure (Act X. of 1877), for rateable distribution only amongst decree-holders who have applied for execution prior to that time.—*Vishvanáth Máhesh Var (Applicant) v. Virchand Pánáchand and others (Opponents)*, 1. L. R., 6 Bom. 16.

MONEY paid by a judgment-debtor under arrest, in satisfaction of the decree against him, are not assets realized by sale or otherwise, under s. 295 of the Civil Procedure Code (Act X. of 1877). S. 295 of the Civil Procedure Code (Act X. of 1877) must be read as if the words "from the property of the judgment-debtor" were inserted after the word realized.—*Pur-hotamdass Tribhovandas and another v. Mahanant Surajbhurathi Haribharathi, and Trikanlal Mancharam v. Mahanant Surajbhurathi*, 1. L. R., 6 Bom. 588.

WHERE property attached in execution of a decree of a Munsif's Court is, or becomes, subject to an attachment issued from a Subordinate Judge's Court, the holder of the decree in the Munsif's Court, in order to share rateably in the assets under s. 295 of the Code of Civil Procedure, must apply to the District Court to transfer his application to the Subordinate Court. *Gopeenath Acharje v. Achcha Bibee* (1. L. R., 7 Cal. 553) and *Jethá Vadhavji v. Najeráli Abhráhimji* (1. L. R., 4 Bom. 472) approved.—*Muttalagiri v. Muttayyar*, 6 Mad. 357.

APPLICATION was made for execution of a decree for money against R, and also for execution of a decree against R and another person jointly and severally. Certain immovable property belonging to R was sold in execution of the first decree, the assets which were realized by such sale being sufficient to satisfy the amounts of both decrees. Such property was then sold a second time in execution of the second decree. **HELD**, under these circumstances, that the second sale should be set aside, not being allowed with reference to the provisions of s. 295 of Act X. of 1877.—*Rati Ram and another (Judgment-debtor) v. Chiranji Lal and another (Opposite Parties)*, 1. L. R., 3 All. 579.

AN APPLICATION for execution must not only have been made before the assets came into the hands of the Court, but must also be on the file and undisposed of, to entitle a decree-holder under s. 295 of the Code of Civil Procedure to share rateably in the assets realized by another decree-holder in execution of his decree against the same judgment-debtor. Where a rateable distribution was ordered among decree-holders whose applications had been struck off the file prior to realization of assets, **HELD** that it was open to the party injured to apply to the High Court under s. 622 to reverse the order.—*Tiruchittambala Chetti v. Seshayyan-gar and others*, 1. L. R., 4 Mad. 383.

THE Judge of a Court of Small Causes sitting in the exercise of his powers as such, and in the exercise of his powers as a Subordinate Judge, is not one and the same Court, but two different Courts. **HELD**, therefore, that the holder of a decree made by the Judge of a Small Cause Court in the capacity of Subordinate Judge, who had applied to such Judge acting in that capacity for execution of his decree, was not thereby entitled to share rateably, under s. 295 of Act X. of 1877, in assets subsequently realized by sale in execution of a decree made by such Judge in the capacity of Judge of such Small Cause Court.—*Himalaya Bank (Plaintiff) v. Hurst and another (Defendants)*, 1. L. R., 3 All. 710.

A JUDGMENT-CREDITOR in execution of his decree attached certain property belonging to his judgment-debtor while Act VIII. of 1859 was in force. This property was ultimately sold on the 9th January, 1879, *i.e.*, after Act X. of 1877 came into operation. Two days before the sale, another judgment-creditor applied to have his decree satisfied out of the same property by a rateable distribution of the proceeds which might be realized. *Held* that the prior attaching creditor, by his attachment under Act VIII. of 1859, acquired, under s. 270 of that Act, a right to have his decree first satisfied in full, and that he was not deprived of this right by the change in the law introduced by Act X. of 1877, s. 295.—*Narandas v. Bai Manclha*, 1 L. R., 3 Bom. 217.

THE fact that a money-decree has been obtained on a bond by which property has been mortgaged does not destroy the lien on that property. It is open to a plaintiff to establish his right on the bond, as well as on the decree. The purport of ss. 270 and 271 of Act VIII. of 1859 (with which s. 295 of Act X. of 1877 corresponds) is not to alter or limit the rights of parties arising out of a contract, but simply to determine questions between rival decree-holders standing on the same footing, and in respect of whom there is no rule for otherwise determining the mode in which proceeds of property sold in execution shall be distributed.—*Hasoon Ara Begam and another (Plaintiffs) v. Jawadoon-nissa Satoola Khandan and others (Defendant-)*, 1 L. R., 4 Cal. 29.

WHERE two mortgagees, in execution of their several decrees, attached the same property, of which a moiety, without further specification, was respectively mortgaged to each of them, and subsequent to the attachments the property was sold in execution of one of the decrees, *held* that, notwithstanding the whole interest of the mortgagor was intended to be sold, the purchaser took one of the moieties subject to the lien of the unsatisfied mortgagee, and that omission or neglect on the part of the Court executing the decree to give specific direction as provided by cl. b of s. 295 of the Civil Procedure Code did not prejudice the rights of the unsatisfied mortgagee or discharge his encumbrance.—*Janoky Bullubh Sen v. Johiruddin Mahomed Abu Ali Sohye Chowdhry*, 1 L. R., 10 Cal. 567.

CERTAIN moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-debtor obtained decrees against him in the Court of the Subordinate Judge at the same place, and applied to it for the attachment of the same property in execution of their decrees. The Subordinate Judge, accordingly, attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees obtained in the Subordinate Judge's Courts claimed a rateable share in the assets realized by the Small Cause Court, under Act X. of 1877, s. 295. *Held* that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court.—*Jetha Mádhowji v. Nijerul Ibrahimji*, 1 L. R., 4 Bom. 472.

ON the 22nd March, 1878, the first mortgagee of certain property obtained a decree enforcing his mortgage. On the 25th March, 1878, the second mortgagee obtained a decree enforcing his mortgage. Both decrees were made by the same Court. On the 20th June, 1878, the property was put up for sale in execution of the second mortgagee's decree. The first mortgagee subsequently brought a suit for a re-sale of the property in satisfaction of his decree. *Held* that this was the only course open to him, and he could not have enforced satisfaction of his decree in accordance with the provisions of s. 295 of the Civil Procedure Code, inasmuch as the provisions of the first and second provisos to that section refer only to sales in execution of simple money-decrees, whereas the property in question had been sold in execution of a decree ordering its sale, and the provisions of the third proviso relate to subsequent and not prior incumbrances.—*Jagat Nardin Rai v. Dhundhey Rai*, 1 L. R., 5 All. 566.

ONE Mániklal obtained a decree against L and M for rent due from them, and, in execution thereof, applied for the attachment and sale of two houses, with their compounds and the grounds underneath them (in respect of which property the said rent had fallen due), belonging respectively, one to each of his judgment-debtors. The properties were, accordingly, sold on 23rd July, 1879, and the sale-proceeds handed over to Mániklal. In the meantime, on the 18th February, 1879,

D, a judgment-creditor of M under a money-decree, applied for the attachment and sale of the same immoveable property (excepting the houses) of his judgment-debtor, which had been previously attached under Maniklal's decree for rent. On the realization of the sale-proceeds, D applied, under Act X. of 1877, s. 295, for a rateable proportion of the assets realized by the sale of M's property in execution of Maniklal's decree. *Held* that D was not entitled to such rateable proportion of the assets.—*Maniklal Venilal v. Lakha and Mansing*, I. L. R., 4 Bom. 429.

THE salary of a karkūn, who was employed in the Second-class Subordinate Judge's Court of Anklesvar, was attached, in execution of a decree of the First-class Subordinate Judge's Court of Surat, by an order issued by the Surat Court, directing the Anklesvar Court to stop and remit, every month, a moiety of the said karkūn's salary to itself (the Surat Court) until satisfaction of the decree. While the decree of the Surat Court was thus in course of execution, another judgment-creditor of the karkūn, who had obtained a decree in the Anklesvar Court, applied to it for a rateable distribution of the moiety between himself and the Surat decree-holder, under s. 295 of the Civil Procedure Code, Act X. of 1877. *Held* that the application was not sustainable, inasmuch as the decree of the Surat Court was being executed by itself, and not by the Anklesvar Court, to which the order of attachment was sent as the head of a department, or as "the officer whose duty it was to disburse the salary," and not as the Court executing the decree of another Court. *Jetha Madhavji v. Najerali Abrahamji* (I. L. R., 4 Bom. 472) followed.—*Krishnashankar* (Decree-holder) *v. Chandrasankar* (Judgment-debtor), I. L. R., 5 Bom. 198.

IN EXECUTION of a decree of a Munsif's Court, the plaintiff attached certain money, the proceeds of decrees which her judgment-debtor had obtained against third parties, then lying in a Small Cause Court to her credit, and subsequently obtained an order from the Munsif directing the same to be paid to her in satisfaction of her decree, which order was duly communicated to the Small Cause Court Judge. Subsequently, the defendant, who held another decree against the same judgment-debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under s. 272 of the Civil Procedure Code, to enquire whether the plaintiff was entitled to any priority over the second attaching creditor, and, having decided that question in the negative, divided the sale-proceeds rateably between them. In a suit brought by the plaintiff, under the above circumstances, to recover from the defendant the portion of the sale-proceeds so paid to him, *held* that s. 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court Judge to execute her decree, and it had never been transferred to the Court for execution; and that the proviso in s. 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held* also that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge, and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought. *Quære*.—Whether an order made by a Court under s. 272 was intended by the Legislature to be a final order?—*Gopee Nath Acharjee v. Achha Bibee*, I. L. R., 7 Cal. 553.

THE proclamation of sale required by s. 274 of the Civil Procedure Code to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the

day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lall Pooree v. Shib Pershad Madi*, I. L. R., 7 Cal. 34.

(b) *Rules as to Moveable Property.*

296. If the property to be sold be a negotiable instrument or a **M.S.C.O.**

Rules as to negotiable instruments and shares in public Companies.

share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

297. In the case of other moveable property, the price of each lot **M.S.C.O.**

Payment for other moveable property sold.

shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Koorer*, I. L. R., 7 Cal. 337.

298. No irregularity in publishing or conducting the sale of move- **M.S.C.O.**

Irregularity not to vitiate sale of moveable property, but any person injured may sue.

able property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other be the purchaser) for the recovery of the specific property, and for compensation in default of such recovery.

299. When the property sold is a negotiable instrument or other **M.S.C.O.**

Delivery of moveable property actually seized.

moveable property of which actual seizure has been made, the property shall be delivered to the purchaser.

M.S.C.C. 300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the delivery of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession, prohibiting him from delivering possession of the property to any person except the purchaser.

M.S.C.C. 301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary, or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

M.S.C.C. 302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect:—"A. B., by C. D., Judge of the Court of (or as the case may be); in a suit by E. F. against A. B."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

M.S.C.C. 303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

(c) *Rules as to Immoveable Property.*

304. Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of Small Causes.

What Courts may order sales of land.

A SHIKMI ghatwali tenure, held under the superior ghatwal, is not liable to be sold in execution, nor are its proceeds liable to attachment for satisfaction of the debt due from its holder.—*Bally Dobey v. Ganei Deo*, I. L. R., 9 Cal. 388.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mort-

Postponement of sale of land to enable defendant to raise amount of decree.

gage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of property comprised in the order for sale, for such period as it thinks proper, to enable him to raise the amount.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease, or sale: provided that all moneys payable under such mortgage, lease, or sale, shall be paid into Court, and not to the judgment-debtor.

Provided also that no mortgage, lease, or sale under this section, shall become absolute until it has been confirmed by the Court.

THE sale of immoveable property to the highest bidder for a price which subsequently appears to be too low is not a material irregularity in publishing or conducting the sale. A decree-holder or a judgment-debtor cannot apply to set aside a sale on the ground of the price realized being too low.—*Lakshmi v. Krishnabhat*, I. L. R., 8 Bom. 424.

306. On every sale of immoveable property under this chapter, the

person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Koor*, I. L. R., 7 Cal. 337.

THE person declared to be the purchaser of property put up for sale in execution of a decree did not, as required by s. 306 of the Civil Procedure Code, pay a deposit of twenty-five per centum on the amount of his purchase immediately after such declaration, but on a date subsequent to the date on which the property was put up for sale. *Held* that there was no sale at all of the property.—*Intizum Ali Khan v. Narain Singh*, I. L. R., 5 All. 316.

A CO-SHARER in undivided immoveable property, of which a share is sold in execution of a decree, does not, under Act X. of 1877, s. 310, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of sale required by ss. 306 and 307 of that Act. He must bid at the sale, and as high as the stranger, before he can acquire a right of pre-emption under that section.—*Tej Singh v. Gobind Singh*, I. L. R., 2 All. 850.

THE requirement of s. 306 of the Civil Procedure Code applying to all cases of sale of immoveable property under chapter xix, a decree-holder buying with permission given under s. 294, and desiring to set-off his purchase-money against the amount of the decree, is not exempt from the necessity of making at the time of sale a deposit of 25 per cent. on the amount of such purchase-money; and such deposit must be made in cash. The option so to set-off the purchase-money cannot be exercised by the purchaser until the confirmation and payment of expenses of the sale. Where, however, all parties interested in the amount to be deposited have waived their right to have that amount deposited in cash, the sale ought not to be set aside on the ground that a cash deposit has not been made.—*Gopal Singh (Judgment-debtor), Appellant, v. Ray Banwaree Lall Sahoo (Judgment-creditor), Respondent*, 5 Cal. Law Rep. 181.

307. The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

A CO-SHARER in undivided immoveable property, of which a share is sold in execution of a decree, does not, under Act X. of 1877, s. 310, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of sale required by ss. 306 and 307 of that Act. He must bid at the sale, and as high as the stranger, before he can acquire a right of pre-emption under that section.—*Tej Singh v. Gobind Singh*, I. L. R., 2 All. 850.

308 In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may subsequently be sold.

UNDER the rules of the High Court, dated 21st June, 1882, a payment into the Government treasury is equivalent to a payment into Court for the purposes of s. 308 of the Code of Civil Procedure, 1882.—*Srinivasa v. Malayachan*, I. L. R., 7 Mad. 211.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss. 297, 303, and 308.—*Ramdhani Sahai v. Rajrani Kooer*, I. L. R., 7 Cal. 337.

309. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Kooer*, I. L. R., 7 Cal. 337.

310. When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

Co-sharer of share of undivided estate sold in execution to have preference in bidding.

THE provisions of s. 310 of Act X. of 1877 are not applicable in a case where the property sold is not a share of undivided immoveable property, but the rights and interests of a mortgagee in such a share.—*Jairam Das and another (Defendants) v. Beni Prasad (Plaintiff)*, I. L. R., 3 All. 15.

THE requirements of s. 310 of Act X. of 1877 are not satisfied by the co-sharer preferring his claim to the right of pre-emption before the property is knocked down, and offering to pay a sum equal to that bid by the highest bidder. That section contemplates a distinct bid by the co-sharer in the ordinary manner of offering bids. *Tej Singh v. Gobind Singh* (I. L. R., 2 All. 850) followed.—*Hira (Plaintiff) v. Unas Ali Khan (Defendant)*, I. L. R., 3 All. 827.

A CO-SHARER in undivided immoveable property, of which a share is sold in execution of a decree, does not, under Act X of 1877, s. 310, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of sale required by ss. 306 and 307 of that Act. He must bid at the sale, and as high as the stranger, before he can acquire a right of pre-emption under that section.—*Tej Singh v. Gobind Singh*, I. L. R., 2 All. 850.

A SHARE of undivided immoveable property was put up for sale in execution of a decree, and was knocked down to M. Before it was knocked down to him, A, the decree-holder, who had obtained permission to bid for and purchase such share, and who was a co-sharer of such share, bid the same sum as that for which it was knocked down to M, claiming the right of pre-emption. The Court executing such decree subsequently made an order confirming the sale of such share in favour of A. M appealed, impugning the propriety of the confirmation of the sale in favour of A. *Held* that such appeal would not lie.—*Munir-ud-din Khan and another (Auction-purchasers) v. Abdul Rahim Khan (Decree-holder)*, I. L. R., 3 All. 674.

A PERSON claiming to be a co-sharer in certain undivided immoveable property, a share of which had been sold in execution of a decree, objected to the confirmation of the sale in favour of the person recorded as the auction-purchaser, and prayed that it might be confirmed in his favour, with reference to the provisions of s. 310 of the Civil Procedure Code. The Court disallowed the objection, and confirmed the sale in favour of the auction-purchaser. The objector thereupon applied to the High Court for revision of the order of the lower Court under s. 622 of the Civil Procedure Code. *Held* that, having been allowed to object to the confirmation of the sale, and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in s. 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under s. 622 of the Code; but that, as he was not one of the persons who was competent to avail himself of the provisions of s. 311, he had no *locus standi* to justify his application to the lower Court, and the application for revision must therefore be dismissed.—*Bisheshar Kuar v. Hari Singh*, I. L. R., 5 All. 42.

311. The decree-holder, or any person whose immoveable property

Application to set aside sale of land on ground of irregularity. has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it;

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

THE sale of immoveable property by an amin on a close holiday is not illegal, nor is it an irregularity in publishing or conducting the sale.—*Bisram Mahton (Decree-holder) v. Sahibun-nissa (Auction-purchaser)*, I. L. R., 3 All. 333.

THE provisions of s. 13 of Act XV. of 1877 are not applicable to proceedings in the execution of a decree.—*Ahsan Khan (Judgment-debtor) v. Ganga Ram (Decree-holder) and Muzzaffar Ali Khan (Auction-purchaser)*, I. L. R., 3 All. 185.

WHERE, after a judgment-debtor has applied, under Act X. of 1877, s. 311, to have a sale set aside, the auction-purchaser is made a party to the proceedings, and the sale is set aside, the auction-purchaser can appeal against the order setting aside the sale.—*Gopal Singh v. Dular Kuar*, I. L. R., 2 All. 252.

ALTHOUGH the auction-purchaser may not apply under Act X. of 1877, s. 311, to have a sale set aside, he may be a party to the proceedings after an application has been made under that section, and then, if an order is made against him, he can appeal from such order under s. 588.—*Kanthi Ram v. Bankey Lal*, I. L. R., 2 All. 396.

THE procedure to be followed upon the sale of an under-tenure is that prescribed by the Civil Procedure Code. S. 311 does not apply only to sales made under chap. xix of the Code, and the sale of an under-tenure may be set aside upon any of the grounds mentioned in that section.—*Azizoonnessa Khattoon v. Gora Chand Dass*, I. L. R., 7 Cal. 163.

Held that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale. *Mohunt Megh Lall Poorce v. Shib Pershad Madi* (I. L. R., 7 Cal. 34) dissented from.—*Rahchandar Bahadur v. Kamta Prasad*, I. L. R., 4 All. 300.

THE words, "any person whose immoveable property has been sold," in s. 311 of the Code of Civil Procedure, do not include a person who has purchased the same property at a prior execution-sale, such prior sale not having been confirmed.—In the matter of the Petition of Bhagubuti Churn Bhuttacharjee Chowdhry; *Bhagubuti Churn Bhuttacharjee Chowdhry v. Bisheshwar Sen and others*, I. L. R., 8 Cal. 367.

WHEN a judgment debtor has died after decree, but before application has been made to execute the decree, the Court, before directing the attachment and sale of any property to proceed, must issue a notice to the party against whom the execution is applied for to show cause why the decree should not be executed against him, and its omission to do so will invalidate the entire subsequent proceedings.—In the matter of the Petition of Ramessuri Dassce; *Ramessuri Dassce v. Doorgadas Chatterjee*, I. L. R., 6 Cal. 103.

A SUBORDINATE Judge made an order for the sale, in execution of a decree, of certain immoveable property, which was "ancestral," within the meaning of the notification by the Local Government, No. 671, dated the 30th August, 1880, under which execution of such decree should have been transferred to the Collector; and such property was sold accordingly. Held that the order for the sale of such property having been made without jurisdiction, the sale was void, and should be set aside.—*Lukhdeo Rai v. Sheo Ghulam and others*, I. L. R., 4 All. 382.

THE omission to specify in the proclamation the amount of Government revenue payable in respect of the property sold in execution of a decree is an irregularity contemplated by s. 311 of the Code of Civil Procedure, and where it appeared that an inadequate price was obtained in a case where such an omission was made, the High Court set aside the sale, although the irregularity had not been made a ground of objection in the lower Court. *Sree Gidhari Singh v. Hurdeo Narain Singh* (L. R., 31 A. 230).—*Mahabir Pershad Singh and another (Appellants) v. R. Olpherts and another (Respondents)*, 9 Cal. Law Rep. 134.

THE holder of a decree, in execution of which property is sold, is absolutely bound under Act X. of 1877, s. 294, to have express permission from the Court before he can purchase the property; and whether this objection is taken and pressed or otherwise, a sale to him is invalid, unless he has got explicit permission. The use, at a sale, of language by an intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property, is a "material irregularity," sufficient to render the sale invalid, under s. 311 of the same Act.—*Rukhinee Bullabh v. Brojonath Sircar*, I. L. R., 5 Cal. 308.

UNDER ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary.—*Kalytara Chowdhrair v. Ramcoomar Goopta*, I. L. R., 6 Cal. 466.

THE property of a judgment-debtor was proclaimed and advertized for sale in execution of a decree on a certain day. The proclamation set out particulars of the

property, but subsequent to such proclamation a portion of the property was released to a third party. Notwithstanding this fact, no fresh proclamation was made, and the sale took place on the day originally fixed. *Held* that the omission to issue a fresh proclamation was a material irregularity, inasmuch as the judgment-debtor was entitled to have a proclamation issued accurately describing the property to be sold, and that such proclamation should be published thirty days before the sale. See also *Gopecnath Dobey v. Roy Luchneeput Singh Bahadur* (I. L. R., 3 Cal. 542).—*Shib Prakash Singh* (Judgment-debtor) *v. Sardar Dayal Singh* (Decree-holder), I. L. R., 3 Cal. 544.

WHEN liberty is given to a decree-holder to bid at the sale of the judgment-debtor's property, he is bound to exercise the most scrupulous fairness in purchasing that property, and if he or his agent dissuades others from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside. Where a decree-holder was joint in family with the manager of an infant defendant, and the defendant's property was to be sold in execution of the decree, *held* that the decree-holder ought not to be granted leave to purchase at the sale, because any purchase made by him would be for the benefit of the family of which the manager of the infant defendant was one of the members; and it would, in fact, be a purchase by an agent of the property of his principal.—*Woopendro Nath Sircar v. Brojendronath Mundul*, I. L. R., 7 Cal. 346.

ON THE day fixed for the sale of certain immoveable property in the execution of a decree the Court made an order postponing the sale, but the sale had been effected before such order reached the officer conducting it. The Court, on application having been made to set aside the sale, passed an order confirming it. Subsequently, an application by the decree-holder for a review of this order having been granted, the Court passed an order setting the sale aside as illegal. *Held* that the sanction to the sale originally given having been withdrawn, the sale could not legally be held, and the sale which was effected, the order of postponement notwithstanding, was unlawful and invalid, and in reviewing its first order, and in setting aside the sale as illegal, the Court executing the decree had not acted *ultra vires*, and its action was not otherwise illegal (H. C. R., N. W. P., 1874, p. 354).—*Miah Jan* (Auction-purchaser) *v. Man Singh* (Decree-holder), I. L. R., 2 All. 686.

UNDER Act XII. of 1879, Form 149 of Schedule IV. of the Code of Civil Procedure provided that sixty days should elapse between a sale in execution of a decree and its confirmation. A sale having been confirmed before the expiry of sixty days, *held* that the sale was not rendered inoperative, and that its effect was not postponed by reason of the provision in Form No. 149. Where a suit was brought to recover money from the defendant, who was the karnavan of a Malabar tarwad, and it was not alleged in the plaint that the defendant was sued as karnavan, or that the debt was binding on the tarwad, *held* that a sale of tarwad property in execution of the decree was not binding on the members of the tarwad, and therefore that art. 12 of Schedule II. of the Indian Limitation Act, 1877, did not apply to a suit brought by other members of the tarwad to recover the land sold in execution of the decree.—*Haji v. Atharaman*, I. L. R., 7 Mad. 512.

THE omission to give the notice required by s. 248 of Act X. of 1877 to the judgment-debtor, on application for execution of the decree, affects the regularity of the sale which subsequently takes place in execution of the decree, and the validity of the entire execution-proceedings. *Ramessuri Dass v. Doorgadass Chatterjee* (I. L. R., 6 Cal. 103) followed. *Held*, therefore, where execution of a decree was applied for against the legal representative of a deceased judgment-debtor, and the notice required by s. 248 of Act X. of 1877 was not given to such legal representative, and certain immoveable property belonging to the deceased judgment-debtor was sold, that such sale had been properly set aside by the Court executing the decree by reason of such omission. *Quære*.—Whether such omission was an irregularity in "publishing or conducting" the sale within the meaning of s. 311 of the Act?—*Imam-un-nissa Bibi* (Auction-purchaser) *v. Liakat Husain* and others (Judgment-debtors), I. L. R., 3 All. 424.

AN OBJECTION to the validity of a sale of revenue-paying land, on the ground that the revenue assessed upon it had not been stated in the proclamation of the

intended sale in accordance with s. 287 of Act X. of 1877, was taken, for the first time, in the Court of appeal; an application to set aside the sale, on the ground that it had taken place without proclamation made, having been rejected by the Court of first instance, which found that proclamation had been made. *Held* that the objection was taken too late, although, if properly taken in the Court of first instance, it would have been good to the extent that not stating the amount of the revenue was an irregularity; substantial damage, resulting from it, remaining to be proved, as required by s. 311 of Act X. of 1877. *Held* also that inadequacy of price having been alleged as substantial damage, without having been proved to be the effect of the non-statement of the revenue, the applicant had not (as required by s. 311) proved, to the satisfaction of the Court, that he had sustained substantial damage by reason of such irregularity.—*Macnaghten v. Mahabir Pershad Singh*, I. L. R., 9 Cal. 656.

AN APPLICATION under s. 311 of Act X. of 1877 to set aside a sale in execution of a decree having been made by the judgment debtor, the Court executing the decree (Subordinate Judge) disallowed the objections, and passed an order confirming such sale. The judgment-debtor subsequently applied to the Subordinate Judge for a review of judgment. The Subordinate Judge, without recording his reasons for granting such application, irregularly proceeded at once to pass an order setting aside such sale, without cancelling the previous order confirming it. The auction-purchaser appealed to the District Judge. That officer, treating the appeal as one from an order granting an application for review of judgment, entertained it, and set aside the Subordinate Judge's second order. *Held* that the District Judge was not justified in entertaining such appeal, such order not being one granting an application for review, but one setting aside a sale, and as such not appealable. Before a review of judgment is granted, an order granting the application for review, and the reason for granting the same, should be recorded.—*Bharon Din Singh (Judgment-debtor) v. Ram Sahai (Auction-purchaser)*, I. L. R., 3 All. 316.

ON AN application under s. 311 of the Civil Procedure Code (Act X. of 1877) to set aside a sale, it appeared that there had been a material irregularity in publishing the sale; but no witnesses were called to prove that substantial injury had been caused thereby. It also appeared that seventeen days after the applicant had applied for proclamations to be issued to his witnesses, he deposited the requisite fees; and that, subsequently, there was a delay of seven days in the office in issuing such proclamations, which were ultimately issued only three days prior to the day fixed for the hearing. On the applicant alleging that, in consequence of such delay, he had not been allowed a fair opportunity to produce his witnesses, *held* that the Court cannot presume that substantial injury has been caused from the mere fact of there having been a material irregularity in publishing a sale; but when both a material irregularity and substantial injury have been proved, the Court may reasonably presume that the substantial injury is due to such irregularity. *Held* also that the applicant, having been guilty of laches himself, could not be allowed to set up the delay in the office as a ground for the non-production of his witnesses.—*Bonomali Mozumdar v. Womesh Chunder Bondopadhyaya*, I. L. R., 7 Cal. 730.

A PERSON claiming to be a co-sharer in certain undivided immoveable property, a share of which had been sold in execution of a decree, objected to the confirmation of the sale in favour of the person recorded as the auction-purchaser, and prayed that it might be confirmed in his favour, with reference to the provisions of s. 310 of the Civil Procedure Code. The Court disallowed the objection, and confirmed the sale in favour of the auction-purchaser. The objector thereupon applied to the High Court for revision of the order of the lower Court under s. 622 of the Civil Procedure Code. *Held* that, having been allowed to object to the confirmation of the sale, and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in s. 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under s. 622 of the Code; but that, as he was not one of the persons who was competent to avail himself of the provisions of s. 311, he had no *locus standi* to justify his application to the lower Court, and the application for revision must therefore be dismissed.—*Bisheshwar Kuar v. Hari Singh*, I. L. R., 5 All. 42.

THE mere fact that the amount of rent payable in respect of a tenure brought to sale in execution of a decree is not stated in the sale-proclamation is not a material irregularity within the meaning of s. 311 of the Civil Procedure Code (Act X. of 1877), though if the amount of rent payable were stated to be more than it actually was, that might constitute such an irregularity as tending to lessen the price at which purchasers might be willing to buy. Where decrees for arrears of rent had been obtained by fractional shareholders in a tenure, and in execution thereof a moiety of the tenure had been sold, it appeared that the other moiety had been sold at the same time in execution of a mortgage-decree against some of the judgment-debtors in the rent-suits, on an objection being taken to the confirmation of such sale on the ground that the whole tenure shall have been sold in execution of the rent-decrees. *Held* that all that the decree-holders were entitled to have sold was the right, title, and interest of their judgment debtors, and that they were in the position of ordinary creditors having no lien on the tenure; and that, consequently, the mortgagor being entitled to enforce his lien against the moiety covered by his mortgage, the sale of the remaining moiety in satisfaction of the rent-decrees was a good sale, and could not be set aside.—*Mohendro Coomar Dutt v. Heera Mohun Coondoo, and Ishaneswary Dassee v. Gopal Das Dutt*, I. L. R., 7 Cal. 723.

CERTAIN immoveable property was attached in execution of a decree made by a Subordinate Judge, and also in execution of a decree made by a Munsif. These decrees were held by the same person, and the judgment-debtor was the same person. Such property was sold in execution of both decrees. On the application of the judgment-debtor, who brought into Court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale. Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale. *Per* Spankie, J.—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside. *Per* Oldfield, J.—That, having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale; but inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere.—*Chunni Lal and others (Judgment-debtors) v. Debi Prasad and another (Auction-purchasers)*, I. L. R., 3 All. 356.

ON THE 21st August, 1876, certain immoveable property belonging to M was put up for sale, and was purchased by R. On the 20th April, 1877, such sale was set aside under s. 256 of Act VIII. of 1859, on the ground that the order attaching such property and the notifications of sale had not, as required by s. 222, been signed by the Court executing the decree, but by the munsarim of the Court. On the 27th June, 1877, M conveyed such property to H, who purchased it *bond fide*, and for value, and satisfied the incumbrances existing thereon. On the 15th April, 1878, R sued H and M to have the order setting aside such sale set aside, and to have such sale confirmed in his favour, on the ground that it had been improperly set aside under s. 256 of Act VIII. of 1859, the judgment-debtor not having been prejudiced by the irregularities in respect whereof such sale had been set aside. *Held* (by Oldfield, J.) that although such sale might have been improperly set aside, yet inasmuch as the order of attachment and the notifications of sale could have no legal effect, having been signed by the munsarim of the Court executing the decree, and not by the Court, as required by s. 222 of Act VIII. of 1859, and inasmuch as it would be inequitable, after the incumbrances on such property had been satisfied and the state of things changed, to allow R, after standing by for a year and permitting dealings with the property, to come in and take advantage of the change of circumstances, and obtain a property, become much more valuable at the price he originally offered, R ought not to obtain the relief which he sought. *Held* (by Straight, J.) that the fact that the Court executing the decree had not signed the order of attachment and the notifications of sale vitiated the proceedings in execution *ab initio*, and rendered the sale which R desired to have confirmed void, and R's

suit therefore failed, and had properly been dismissed.—*Ram Dial (Plaintiff) v. Mahtab Singh and others (Defendants)*, I. L. R., 3 All. 701.

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this section, shall be brought by the party against whom such order has been made.

HELD (Oldfield, J., dissenting) that a suit by the purchaser at a sale of immoveable property in execution of a decree, which has been set aside under ss. 311 and 312 of Act X. of 1877, to have such sale confirmed, on the ground that there was no irregularity in the publication or conduct thereof, is not barred by the last clause of s. 312 or by the last clause of s. 588, but is maintainable.—*Azim-ud-din (Defendant) v. Baldeo (Plaintiff)*, I. L. R., 3 All. 554.

PROCEEDINGS to execute a decree commenced when the former Code of Civil Procedure (Act VIII. of 1859) was in force; but property belonging to the judgment-debtor was sold in pursuance of those proceedings on the 14th November, 1877, after the new Code (Act X. of 1877) came into operation. Subsequently, at the instance of the applicant, the Court made an order, setting aside the sale on the ground of irregularity. **Held** that this order was governed by the former Code, and was consequently not subject to appeal.—*Chinto Jhosi (Applicant) v. Krisnaji Narayan (Opponent)*, I. L. R., 3 Bom. 214.

THE COURT executing a decree having made an order setting aside a sale under Act VIII. of 1859 of immoveable property in the execution of the decree, the purchaser at such sale sued the decree-holder and the judgment-debtor to have such order set aside, and to have such sale confirmed in his favour. **Held** (Oldfield, J., dissenting) that the suit was maintainable, the provision of s. 257 precluding an appeal from an order setting aside a sale, and not a suit to contest the validity of such an order; and that the order setting aside the sale in this case being *ultra vires*, the auction-purchaser was entitled to the relief he claimed.—*Diwan Singh and another (Plaintiffs) v. Bharath Singh and others (Defendants)*, I. L. R., 3 All. 206.

On the 16th June, 1877, certain property was sold in execution of decree, and on the 29th June, 1877, the judgment-debtor, the owner of the property, applied to the Court to set aside the sale, and the sale was set aside by the Subordinate Judge on the 24th January 1878. The decree-holder, who was the purchaser of the property, appealed to the Court of the District Judge, who reversed the order of the Subordinate Judge. **Held** that the Judge had no jurisdiction to do so, as the proceedings must be taken to be governed by Act VIII. of 1859 and not by Act X. of 1877. *Ranjit Singh v. Meharban Koer* (2 C. L. R. 391) cited and followed.—*Binkut Hossein and another (Petitioners) Majidoonnissa and another (Opposite Parties)*, 3 Cal. Law Rep. 208.

CERTAIN immoveable property was put up for sale in the execution of B's decree, and was purchased by him. Subsequently, on the same day, such property was put up for sale in the execution of S's decree, and was purchased by him. B objected to the confirmation of the sale to S on the ground that S's decree had been satisfied previously to such sale, and the Court executing the decrees made an order setting aside such sale on that ground. S thereupon sued B to have such order set aside, and to have such sale confirmed, and to obtain possession of such property. **Held** that, inasmuch as such order had not been made under s. 257 of Act VIII. of 1859, but had been made at the instance of a purchaser under another decree, and B's decree, as a matter of fact, had not been satisfied, S's suit to have such order set aside was maintainable.—*Sangam Ram (Defendant) v. Sheo Baratt Bhagath (Plaintiff)*, I. L. R., 3 All. 112.

CERTAIN immoveable property was attached in execution of a decree made by a Subordinate Judge, and also in execution of a decree made by a Munsif. These decrees were held by the same person, and the judgment-debtor was the same person. Such property was sold in execution of both decrees. On the application of the judgment-debtor, who brought into Court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale. Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale. *Per Spankie, J.*—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside. *Per Oldfield, J.*—That, having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale; but, inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere.—*Chunni Lal and others (Judgment-debtors) v. Debi Prasad and another (Auction-purchasers), I. L. R., 3 All. 356.*

AN APPELLATE Court has a discretionary power to substitute or order a new appellant or respondent after the period of limitation prescribed for an appeal. The right, title, and interest of G in certain immoveable property was attached and notified for sale in the execution of a money-decree held by T. It was also attached and notified for sale in the execution of a money-decree held by S and R. The same date was fixed for both sales. The officer conducting sales first sold the property in execution of T's decree, and T purchased the property. He then sold the property in execution of the decree held by S and R, and K purchased the property. The Court executing the decrees confirmed the sale to T, granting him a sale-certificate, and disallowing K's objection to the confirmation. It also confirmed the sale to K, ordering the purchase-money to be paid to S and R, and disallowing K's objection to the confirmation; but it refused to grant K a sale-certificate, on the ground that, as the sale to T had been confirmed, and a sale-certificate granted to him, it could not give K possession of the property. In a suit of K against S and R to recover his purchase-money, *held* (distinguishing the suit from the cases in which it had been held that, when the right, title, and interest of a judgment-debtor in a particular property is sold, there is no warranty that he has any right, title, or interest, and therefore the auction-purchaser cannot recover his purchase-money if it turns out that the judgment-debtor had no interest in the property) that the rule of *caveat emptor* did not apply, and the suit was maintainable. The provisions of s. 257 of Act VIII. of 1859 apply to applications made under s. 256 of that Act, and to those only. *Held*, therefore, that inasmuch as K objected to the confirmation of the sale to him on the ground that the Court was not competent to confirm a sale which had by its previous order been nullified, and not on any of the grounds mentioned in s. 256 of Act VIII. of 1859, K was not precluded by the terms of s. 257 of that Act from maintaining his suit. Where the Court executing two decrees made separate orders directing the sale on the same date of certain immoveable property in execution of such decrees, the officer conducting sales was not bound to sell such property once for all in execution of both decrees, and his selling such property separately was therefore not an irregularity in the conduct of the sales.—*Court of Wards on behalf of the Raja of Kantit (Plaintiff) v. Gaya Pershad and others (Defendants), I. L. R., 2 All. 107.*

313. The purchaser at any such sale may apply to the Court to

Application to set aside sale on ground of judgment-debtor having no saleable interest.

set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit: Provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

IN THE event of the death of the judgment-debtor, notice must issue to his representative before the sale of immoveable property can be set aside under s. 313 of the Code of Civil Procedure, albeit that the section makes no express provision for the appearance of the representative.—*Balá Kádar v. Gulám Mohidin*, I. L. R., 7 Bom. 424.

S. 313 of the Civil Procedure Code only applies to cases in which the judgment-debtor has no saleable interest in the property sold. It does not apply to cases where the judgment-debtor has no saleable interest in a portion only of the property.—In the matter of the Petition of Ram Coomar Dey; *Ram Coomar Dey v. Shushee Bhooshun Ghose*, I. L. R., 9 Cal. 626.

A PERSON who purchases immoveable property at a sale in execution of a decree, knowing that the judgment-debtor has no saleable interest therein, is not entitled to the benefit of the provisions of s. 313 of Act X. of 1877, which were designed for the protection of persons who innocently and ignorantly purchase valueless property.—*Mahabir Prasad (Auction-purchaser) v. Dhumun Das (Decree-holder)*, I. L. R., 3 All. 527.

WHERE, in execution of a decree passed against a person who had previously been adjudicated an insolvent, portions of his property (then vested in the Official Assignee) are attached and sold, the purchaser is entitled to have the sale set aside under s. 313 of the Code of Civil Procedure, notwithstanding that the Official Assignee acquiesces in the sale, and is content to receive the sale-proceeds.—*Dinobundhoo Pal v. Shoshee Mohun Pal*, I. L. R., 9 Cal. 217.

THE fact that property sold in execution of a decree is subject to a mortgage upon which a decree has been obtained, which fact is not disclosed prior to the proclamation of sale, is not sufficient to enable an auction-purchaser to set aside the sale on the ground that the judgment-debtor had "no saleable interest" in the property, within the meaning of s. 313 of the Civil Procedure Code.—*Naharmul Marwari v. Sadat Ali* (8 C. L. R. 468) distinguished.—*Protap Chunder Chuckerbutty v. Panoty*, I. L. R., 9 Cal. 506.

A MISREPRESENTATION or concealment in the sale-notification, which induces a purchaser to buy a property for much more than it is really worth (although that misrepresentation or concealment may be fraudulent), is no ground for setting aside a sale under s. 313 of the Civil Procedure Code. The meaning of s. 313 is, that when a purchaser under an execution-sale buys a property which turns out to have no existence at all, or to be of no saleable value whatever, the Court may then set aside the sale under s. 313.—*Durga Sundari Devi v. Govinda Chandra Addy*, I. L. R., 10 Cal. 368.

IN EXECUTION of a rent-decree, dated 26th May, 1879, certain immoveable property was sold in execution, and purchased by the appellant on the 21st February 1880, no mention having been made of any incumbrances. On the 9th May, 1879, a decree was obtained upon a mortgage executed by the original judgment-debtor, and in execution of that decree the property which had already been sold was attached, and, on the 11th March, again sold in execution of the second decree, it being alleged that the property was covered by the mortgage which was prior in date to the former decree. The appellant thereupon applied that the sale of the 21st March should be set aside under s. 313 of the Civil Procedure Code, and his purchase-money directed to be returned to him. *Held* that if, as a fact, the property sold was covered by the mortgage, there was, under the circumstances, no such saleable interest in the judgment-debtor at the time of the sale on the 21st February, 1880, as would prevent the operation of s. 313 of the Civil Procedure Code, inasmuch as under that sale the purchaser would be unable to get the particular property purchased by him; and that the sale must be set aside.—*Naharmul Marwari (Appellant) v. Sadat Ali and others (Respondents)*, 8 Cal. Law Rep. 468.

IN EXECUTION of a decree obtained on the 15th August, 1876, the property of the judgment-debtor was attached on the 17th August, 1877. The sale of the attached property was postponed pending a suit instituted under the direction of the Court by a claimant to the attached property. This suit having been dismissed on the 13th September, 1878, the decree-holder, on the 25th September, applied for a sale of the property, and the 16th December was fixed for the sale. Meanwhile, on the

13th December, 1877, a decree had been obtained by another party against the judgment-debtor, and in execution of this decree the same property was attached on the 13th September, 1878, and under this attachment a sale took place on the 15th November following. On the 16th December, as fixed, the property was again sold under the first attachment. The auction-purchaser, at that sale, on the 6th January, 1879, applied, under s. 313 of the Civil Procedure Code, to set aside the sale on the ground that the judgment-debtor had no saleable interest. *Held* (reversing the decision of the lower Court) on the authority of the following cases—*Gogaram v. Kartick Chander Singh* (9 W. R. 514), *Lala Joogul Lall v. Bhuka Chowdhary* (9 W. R. 244), and *Kartick Chander Singh v. Gogaram* (2 W. R. Misc. 48)—which the Court felt bound to follow, while it doubted their correctness, that the sale must be set aside—*Chutka Panda (Appellant) v. Goberdhan Dass and others (Respondents)*, 6 Cal. Law Rep. 85.

314. No sale of immoveable property in execution of a decree

Confirmation of sale.

shall become absolute until it has been confirmed by the Court.

Under s. 314 of the Code of Civil Procedure (XIV. of 1882) the Civil Court cannot, upon or without application, refuse to confirm a sale on the ground that the price bid is too low.—*Lakshmi v. Krishnabhat*, I. L. R., 8 Bom. 424.

If sale set aside, price to be returned to purchaser.

315. When a sale of immoveable property is set aside under section 312 or 113,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is, for that reason, deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The repayment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

WHERE immoveable property was sold in the execution of a decree under the provisions of Act VIII. of 1859, and the auction purchaser, having been subsequently deprived of such property on the ground that the judgment-debtor had no saleable interest in it, applied under Act X. of 1877, s. 315, to the Court executing such decree for the return of the purchase-money, *held* that the Court could entertain the application.—In the matter of the *Petition of Mulo* (I. L. R., 2 All. 299). Dissented from in a subsequent case where it was held that Act X. of 1877, s. 315, cannot have retrospective effect so as to apply to a sale which had taken place before the Act came into operation.—*Hira Lal v. Karimunnissa*, I. L. R., 2 All. 780.

Per Straight, Oldfield, and Tyrrell, JJ.—That the words in s. 315 of the Civil Procedure Code, “no saleable interest,” mean “nothing to sell,” and are not intended to confine the cases in which a purchaser at an execution-sale shall be entitled to receive back his purchase-money to those in which the judgment-debtor, though having an interest, such interest is, by prohibition of law or for some other reason, unsaleable. *Held* by the Full Bench that a purchaser at a sale in execution of a decree can maintain a suit against the decree-holder for recovery of his purchase-money when it is found that the judgment-debtor had no saleable interest in the property sold, and he is not limited to the special procedure in the execution department mentioned in s. 315.—*Munna Singh v. Gajadhar Singh*, I. L. R., 5 All. 577.

A JUDGMENT-DEBTOR, whose property had been sold in execution of the decree under Act VIII. of 1859, appealed from the order disallowing his application to set aside the sale, after Act X. of 1877 (Civil Procedure Code) came into force. The Appellate Court set aside the sale. The purchaser sued the decree-holder for

interest on the purchase-money and the expenses of the sale, the purchase-money having been returned to him, under the order of the Court executing the decree, without interest and less such expenses. *Held* by the Full Bench that the provisions of Act X. of 1877, and not of Act VIII. of 1859, were applicable to the determination of the matter in dispute in the suit. *Held* by the Divisional Bench (Straight and Tyrrell, JJ.) that, with reference to the ruling of the Full Bench, the suit was maintainable. *Held* also by the Divisional Bench that, under the circumstances of the case, the plaintiff ought not to be granted the relief sought.—*Raghubar Dayal v. Bank of Upper India, Limited*, I. L. R., 5 All. 364.

316. When a sale of immoveable property has become absolute Certificate to purchaser in manner aforesaid, the Court shall grant a of immoveable property. certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate, and not before: Provided that the decree under which the sale took place was still subsisting at that date.

Held that a sale-certificate granted under s. 316 of the Civil Procedure Code is not a document the registration of which is compulsory under the Registration Act, 1877, s. 17 (b).—*Masarat-un-nissa v. Adit Ram*, I. L. R., 5 All. 568.

UNDER Act VIII. of 1859, s. 259, and Act XX. of 1866, s. 17 and s. 42, it was necessary to register the certificate of sale itself, and not merely the memorandum of the certificate of sale.—*Srinivasa Sastri* (2nd Defendant), Appellant, *v. Seshayangar* (Plaintiff), Respondent, I. L. R., 3 Mad. 41.

WHERE the interest of one of several joint tenants in a family dwelling-house and in certain lands let out on service-tenure is sold in execution, the purchaser is entitled to joint possession of the dwelling house with the other shareholders, and also to a right to share in the service rents. *Kowar Bijoi Kesal Roy v. Samasundari* (B. L. R. Sup. Vol. 173; 2 W. R. Mis. 30) commented on.—*Rajanikanth Biswas v. Ram Nath Neogy*, I. L. R., 10 Cal. 244.

WHERE land subject to an unregistered mortgage, the registration of which was optional, was attached and sold in execution of a money-decree obtained against the mortgagor, and the purchaser registered his certificate of sale and obtained possession of the land, *held* that no question of priority under s. 60 of the Registration Act could arise, inasmuch as the purchaser acquired only the right, title, and interest of the mortgagor subject to the mortgage.—*Rámárajá v. Arunáchala*, I. L. R., 7 Mad. 248.

A PURCHASER of immoveable property at a Court sale under the Civil Procedure Code (Act VIII. of 1859), who has been put into possession by the Court, has thereupon a complete title against all persons bound by the decree, notwithstanding that he has no certificate of sale, or one only which has not been registered. *Ráj-kishan Mookerjee v. Radha Madhab* (21 W. R. 349) followed. *Quære*.—How far the above ruling will be affected by the language of s. 316 of Act XIV. of 1882?—*Shivaram Naráyan v. Rávjí Sakhárám*, I. L. R., 7 Bom. 254.

CLAUSE 178, sch. ii. of the Limitation Act (XV. of 1877), is not applicable to applications for certificates of sale. *Re Khaja Patthanjee* (I. L. R., 5 Bom. 202) dissented from. The provisions of the Indian Limitation Act (XV. of 1877) do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character. *Kylasa Goundan v. Ramasami Ayyan* (I. L. R., 4 Mad. 172) followed.—*Vithal Janardan v. Vithojirav Putlajirav*, deceased, by his widow Rakni and others, I. L. R., 6 Bom. 586.

THE applicant purchased certain land at a Court-sale on the 17th February, 1876. The sale was confirmed on the 20th March of the same year. The purchaser did

not apply for a certificate of sale until the 10th March, 1880. *Held* that the application was barred by the Limitation Act (XV. of 1877), sch. i, art. 178. *Held* also that the purchaser's right to a certificate of sale accrued to him under ss 256, 257, and 259 of the Civil Procedure Code (Act VIII. of 1859) on the 20th March, 1875, when the sale was confirmed.—*In re Khaja Patthanji*, Applicant, I. L. R., 5 Bom. 202.

A CREDITOR obtained a decree against his debtor, and applied for and obtained an order for execution. This application was unsuccessfully opposed by the judgment-debtor on the ground that execution was barred by limitation. Certain properties of the judgment-debtor were attached and sold in execution of this decree, the judgment-creditor himself becoming the purchaser. In due course, the sale was confirmed, and a certificate granted to the purchaser. Subsequently to this, the order granting execution came up before the High Court on appeal, and that Court decided that execution was barred. The person who had been the judgment-debtor then brought a regular suit against the purchaser to recover the properties sold in execution. *Held* that he was entitled to have the sale set aside by regular suit. *Jan Ali v. Jan Ali Chowdhry* (1 B. L. R., A. C., 56; 10 W. R. 154) distinguished.—*Mina Kumari Bibee v. Jagat Sattani Bibee*, I. L. R., 10 Cal. 220.

CERTAIN immoveable property was put up for sale, under the provisions of Act X. of 1877, in execution of a decree for money, and was purchased by C. with notice that L held a decree enforcing a lien on such property. Subsequently L applied for the sale of such property in execution of his decree, and such property was put up for sale in execution of that decree, and was purchased by S. S sued, by virtue of such purchase, to recover possession of such property from C. *Held* that, inasmuch as under Act X. of 1877 what is sold in execution of a decree purports to be the specific property, and as C had purchased the property in suit with notice of the existing lien on it, and subject to its re-sale in execution of the decree in execution of which S had purchased it, what actually was sold in execution of that decree to S was such property, and S was entitled to possession of such property under such sale. Sales under Act VIII. of 1859 and Act X. of 1877 distinguished.—*Sheo Ratan Lal (Plaintiff) v. Chotey Lal (Defendant)*, I. L. R., 3 All. 647.

THE position of a purchaser at a sale in execution of a decree of the High Court after he has obtained a certificate from the Registrar under Rule 415 of the Rules of Court is that of a person clothed with a right to a conveyance in virtue of a contract; he does not hold, save as regards the parties to the contract of sale, the position of an owner. When the sale is confirmed, the purchaser is entitled to a conveyance, and until he obtains a conveyance the property in the estate purchased does not, having regard to Rule 431, pass to him so as to give him rights as against parties not bound by the decree under which the sale took place. All that passes to him as against the defendant in that suit is an equitable estate and a right to a conveyance of the property. And, therefore, as the estate in the property purchased has not passed, the purchaser is not entitled to maintain a suit for partition. In such a suit he could not on partition give a good conveyance to the parties interested in the estate, nor would he be entitled to a declaration of his share in the property.—*Johur Mull Khoorba v. Tarankisto Deb*, I. L. R., 10 Cal. 252.

A PERSON purchased certain property at a sale in execution of a decree in November, 1878; his purchase was confirmed, and he obtained a certificate of sale on the 23rd May, 1879, from which date he remained in possession. The judgment-debtor applied to have the sale set aside for irregularity, but his application was dismissed both at the hearing and on the appeal. He had applied, before the sale took place, to stay the sale, on the ground that the right to apply for execution was barred. This application was dismissed, but was allowed on appeal. It did not appear that the auction-purchaser was a party to the proceeding, or that he was cognizant of the application. Two years from the date of the sale, and one and-a-half year from its confirmation, the judgment-debtor, on a summary application, obtained an order setting aside the sale, and putting the auction-purchaser out of possession. *Held* that the order was erroneous, the Subordinate Judge having no power, after the sale had been confirmed, to set aside the sale by a summary order; and that, under art. 165, sch. ii. of Act XV. of 1877, the application for such an order was

barred. The words, "subsisting decree," in s. 316 of Act X. of 1877, as amended by Act XII. of 1879, mean a decree unreversed and in full force, and not merely one upon which execution cannot be issued.—In the matter of the Petition of Mahomed Hossein v. Kokil Singh, I. L. R., 7 Cal. 91.

317. No suit shall be maintained against the certified purchaser on

Bar to suit against purchaser buying benámi. the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

THE provisions of s. 317 of the Code of Civil Procedure are no bar to a suit for partition brought by a Hindú son against his father and a certified purchaser of family-property, who has bought benámi for the father with the family-funds at a sale in execution of a decree against the father.—*Natésa v. Venkataramáyyan*, I. L. R., 6 Mad. 135.

IN a suit to obtain possession of certain property purchased at an execution-sale, the plaintiff who alleged that the purchase had been made for his benefit, and that the certified purchaser was his benámidar, made the certified purchaser, who admitted his allegation, a defendant along with the person in possession. *Held* that the case came within the rule laid down in *Buhuns Koowar v. Lalla Bahoorie Lall* (14 M. I. A. 496; S. C. 10 B. L. R. 159), and that the suit was not barred by s. 317 of the Civil Procedure Code—*Hazi Ayun Mullick* (Plaintiff), Appellant, v. *Sheikh Farut-ulla* and another (Defendants), Respondents, 9 Cal Law Rep. 295.

A SUEE K, the purchaser of certain immoveable property sold in execution of a decree under Act VIII. of 1859, for a declaration that K had purchased such property on her behalf. The suit was instituted after Act VIII. of 1859 was repealed, and Act X. of 1877 came into force. When the suit was instituted, K did not hold a sale-certificate. After it was instituted, he applied for and obtained a sale-certificate under s. 317 of Act X. of 1877. *Held* that, when the suit was instituted, it was maintainable, as the defendant not being a certified purchaser under s. 260 of Act VIII. of 1859, that section did not apply; and that, when the defendant obtained a certificate under s. 317 of Act X. of 1877, he became a certified purchaser, and the suit would only be maintainable if the plaintiff made out a case falling within the provisions of the last part of s. 317.—*Aldwell v. Ilahi Bakhsh*, I. L. R., 5 All. 478.

318. When the property sold is in the occupancy of the judgment-

Delivery of immoveable debtor or of some person on his behalf, or of property in occupancy of some person claiming under a title created by judgment-debtor. the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

CLAUSE 178, sch. ii. of the Limitation Act (XV. of 1877), is not applicable to applications for certificates of sale. *Re Khaja Paththanjee* (I. L. R., 5 Bom. 202) dissented from. The provisions of the Indian Limitation Act (XV. of 1877) do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character. *Kylasa Goundan v. Ramasami Ayyan* (I. L. R., 4 Mad. 172) followed.—*Vithal Janardan v. Vithojirav Putlajirav*, deceased, by his widow Rakmi and others, I. L. R., 6 Bom. 586.

A OBTAINED a money-decree against B on the 25th January, 1872, in execution of which property belonging to B was sold on the 9th September, 1874, A himself

becoming the purchaser. The sale was confirmed on the 9th October, 1874, but the certificate of sale was not issued till the 23rd January, 1878. A applied for possession on the 2nd April, 1879. *Held* that the right to apply for possession contemplated in Act VIII. of 1859, ss. 263 and 264 (corresponding with Act X. of 1877, ss. 318 and 319), accrued on the date the certificate of sale was issued, and not on that on which the sale was confirmed, and that, therefore, the period of limitation under Act XV. of 1877, sch. 2, art. 178, against the purchaser, counted from the former date.—*Basápá v. Marya*, I. L. R., 3 Bom. 433.

319. When the property sold is in the occupancy of a tenant or

Delivery of immoveable other person entitled to occupy the same, and property in occupancy of a certificate in respect thereof has been granted tenant. under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

CLAUSE 178, sch. ii. of the Limitation Act (XV. of 1877), is not applicable to applications for certificates of sale. *Re Khaja Patthanjee* (I. L. R., 5 Bom. 202) dissented from. The provisions of the Indian Limitation Act (XV. of 1877) do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character. *Kylasa Goundan v. Ramasami Ayyan* (I. L. R., 4 Mad. 172) followed.—*Vithal Janardan v. Vithojirav Putlajirav*, deceased, by his widow Rakmi and others, I. L. R., 6 Bom. 586.

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320. The Local Government may, with the sanction of the Go-

Power to prescribe rules for transferring to Collector execution of certain decrees. verner-General in Council, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector, and rescind or modify any such declaration.

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court.

HELD that effect cannot be given to the rules prescribed by the Local Government under s. 320 of Act X. of 1877, unless an order for sale has been made on or after the 1st October, 1880.—*Hafizun-nissa (Judgment-debtor) v. Madadeo Prasad and another (Decree-holders)*, I. L. R., 4 All. 116.

Held that a decree for the sale of ancestral land, or of an interest in such land, in enforcement of an hypothecation on such land, is a "decree for money" within the meaning of the rules prescribed by the Local Government under s. 320 of Act X. of 1877.—*Birch (Judgment-debtor) v. Rati Ram (Decree-holder)*, I. L. R., 4 All. 115.

A SUBORDINATE Judge made an order for the sale, in execution of a decree, of certain immoveable property, which was "ancestral," within the meaning of the notification by the Local Government, No. 671, dated the 30th August, 1880, under which execution of such decree should have been transferred to the Collector; and such property was sold accordingly. **Held** that the order for the sale of such property having been made without jurisdiction, the sale was void, and should be set aside.—*Lukhdeo Rai v. Sheo Ghulam and others*, I. L. R., 4 All. 382.

ORDERS passed by a Collector in the exercise of the powers conferred on him under s. 320 and the following sections of the Civil Procedure Code, relating to the execution of a decree of a Civil Court, after transfer of the decree to him under s. 320, are not appealable to the High Court. **Held**, therefore, that the order of a Collector, disallowing an application by the judgment-debtor that the amount of the decree might be satisfied by the temporary transfer of his immoveable property, and ordering the sale of such property, and the order of a Collector confirming a sale, were not appealable to the High Court.—*Madho Prasad v. Hansa Kuar*, I. L. R., 5 All. 314.

A COLLECTOR, to whom a decree for sale of mortgaged property has been transferred for execution under s. 320 of the Civil Procedure Code, is limited to one of the three courses specified in s. 321, and may not depart from them; much less may he do what the Court itself could not do in such a case—allow payment of the debt to be made by instalments. A Collector, to whom a decree has been so transferred for execution, acts ministerially, and, when he delegates his functions to an assistant or a *māmlatdar*, incurs a risk of having to answer in damages to the person who is by any error or mistake deprived of the fruits of his judgment; and this risk attaches independently of malice or negligence. The Court that has made a decree or judicial order, which has been transmitted to the Collector for execution, is not deprived of the judicial powers with respect to it which may still, at any particular time, be competent to such Court, and which it would have had, had the order been placed in the hands of its own ordinary officer, the *nāzir*. In the exercise of such powers the Court has authority to recall its own record transmitted to the Collector.—*Mahādājī Karandikar v. Hari D. Chikne*, I. L. R., 7 Bom. 332.

Power of Collector when execution of decree is so transferred.

321. When the execution of a decree has been so transferred, the Collector may—

- (a) proceed as the Court would proceed under section 305; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or
- (c) sell the property ordered to be sold, or so much thereof as may be necessary.

322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Procedure of Collector when execution of decree so transferred.

Notice to be given to decree-holders and to persons having claims on property.

322A. In the case mentioned in section **322**, the Collector shall publish a notice calling upon—

(a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder:

(b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the Court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

322B. Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

322C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections **322A** and **322B**, draw up a statement specifying the circumstances of the judgment-debtor

When District Court may issue notices and hold inquiry.

and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry, and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

Effect of decision of Court
as to dispute arising under
section 322B or 322C.

323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(b) by mortgaging the whole or any part of such property; or

(c) by selling part of such property; or

(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(e) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing, under this section, the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let, or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3), and (4) of this section, the Collector shall be subject to such rules, consistent with this Act, as may, from time to time, be made in this behalf by the Chief Controlling Revenue Authority.

ACT X. of 1877, s. 223, does not apply to a Small Cause Court, and s. 648 does not apply to a case in which the defendant resides within the same district in which the Court issuing a warrant is situate. Consequently, a Small Cause Court may issue a warrant for the arrest of a person residing in another district, but not if he resides within the same district in which the Court is situate, but outside its local jurisdiction.—*Chunilal Sobhárám v. Purbhudás Kursandás*, I. L. R., 2 Bom. 560.

324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if, on the expiration of the said six weeks, the said balance is not so paid, the Collector shall sell such property or part accordingly.

324A. The Collector shall, from time to time, render to the Court which made the original order under section 304 an account of all monies which come to his hands, and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Such balance shall be applied by the Court as follows:—

Application of balance. firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered:

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue (if any) shall be paid to the judgment-debtor or such other person (if any) as the Court directs.

325. When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(c) buy in the property offered for sale, and resell the same by public auction or private contract, as he thinks fit.

325A. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease, or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

325B. When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall, from time to time, be exercised and performed by such one of the Collectors of the said districts as the Local Government may, by general rule or special order, direct.

325C. In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

326. When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive), shall apply, as far as they are applicable.

ACT X. of 1877, s. 326, does not apply to a decree which directs the sale of land or of a share in land in pursuance of a contract specifically affecting the same. The Court, therefore, cannot authorize the Collector to stay the sale in such a case under s. 326.—*Bhagwan Prasad v. Sheo Sahai*, I. L. R., 2 All. 856.

WHERE the Collector has applied to the Court under s. 326 of the Civil Procedure Code, proposing a scheme for the payment of decretal money in order to avoid a sale of attached property, it is in the discretion of the Court to authorize the Collector or not, as it thinks fit, to provide for the satisfaction of the decree in the manner proposed; and the Court is bound to hear any objections which may be made by the decree-holder to the feasibility of the proposed scheme, and any evidence that may be offered in support of those objections; and if, after hearing the decree-holder's objections, and the evidence which may be offered in support of them, the Court is not fully satisfied that the proposal is feasible, or that it can, in all reasonable probability, be carried out within the specified period, the Court ought, in the exercise of its discretion, to refuse its sanction.—*Huro Prosad Roy v. Kali Prosad Roy*, I. L. R., 9 Cal. 290.

327. The Local Government may, from time to time, with the

Local rules as to sales of land in execution of decrees for money. sanction of the Governor-General in Council, make special rules for any local area, imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value;

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may, from time to time, with the sanction of the Governor-General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

H.—Of Resistance to Execution.

328. If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction. M.S.O.C. (so far as relates to moveable property).

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

S. 328 of the Civil Procedure Code (Act XIV. of 1882) does not make it obligatory on a decree-holder, who is obstructed in execution of the decree, to pursue his remedies under that section. Accordingly, the failure on the part of the plaintiff to avail himself of the remedy under that section did not prevent him from proceeding against the defendant by a regular suit.—*Balvant Santaram v. Babaji*, I. L. R., 8 Bom. 602.

WHERE a warrant for possession of land in execution of a decree was not executed owing to the resistance of the judgment-debtors in September, 1880, and no complaint was made under s. 328 of the Code of Civil Procedure, 1877, but a fresh warrant for possession was applied for by and granted to the decree-holders, and resistance was again made in January, 1881, held that a complaint by the decree-holders as to the second obstruction made within thirty days of the second obstruc-

tion was not barred by reason of art. 167 of sch. ii. of the Limitation Act.—
Ramsekara Pillai v. Dharmaraya Goundan and another, I. L. R., 5 Mad. 113.

M.S.C.O.
(so far as
relates to
moveable
property).

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor, or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

The power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under s. 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between a judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant—Govinda Nair (Petitioner) v. Késava (Counter-Petitioner), I. L. R., 3 Mad. 81.

Ditto.

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder, and without prejudice to any penalty to which such judgment-debtor or other person may be liable under the Indian Penal Code or any other law for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into the possession of the property.

Ditto.

331. If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V.,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

APPEALS from orders under s. 331 of Act X. of 1877, as amended by s. 52 of Act XII. of 1879, are chargeable with the same court-fee as is required in the case of appeals from decrees.—Mahbubani and others v. Umrao Begum and others; Shyam Sundari Dasi v. Robert Watson and Co., I. L. R., 8 Cal. 720.

IN A suit under s. 229 of Act VIII. of 1859 (s. 331 of Acts X. of 1877 and XIV. of 1882), the onus is on the plaintiff to establish a *prima facie* case of possession, and it is then incumbent on the claimant to answer that case, and show, if possible, a better title. — *Rakhal Churn Mundul v Watson & Co.*, I. L. R., 10 Cal. 50.

AN INVESTIGATION under s. 331 of the Civil Procedure Code (prior to the Amendment Act of 1879) is limited to the fact of possession, and is no bar to a subsequent suit brought to try the title to the land in dispute. — *Chinnasāmi Pillai (Plaintiff), Appellant, v. Krishna Pillai (Defendant), Respondent*, I. L. R., 3 Mad. 104.

THE power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under s. 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between a judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant. — *Govinda Nair (Petitioner) v Késava (Counter-Petitioner)*, I. L. R., 3 Mad. 81.

THE plaintiff obtained a decree against T, A, and J in a suit, the subject-matter of which exceeded Rs. 5,000, and, in part-execution thereof, attached property worth less than that amount. D having resisted the execution of the decree, the plaintiff's claim was numbered and registered as a suit under s. 229 of Act VIII. of 1859. Upon investigation the First-class Subordinate Judge made an order staying execution of the decree. The plaintiff appealed to the District Judge, who held that no appeal lay to him, as the subject-matter of the original suit, out of which the execution suit arose, exceeded Rs. 5,000. The plaintiff appealed against this decision to the High Court. Held that the investigation of a claim under s. 229 of Act VIII. of 1859 is not to be regarded as a fresh suit, but is merely a continuation of the original suit, and that there was, therefore, no appeal against the order in question to the District Judge — *Ravloji Tamaji (Original Plaintiff), Appellant, v. Dhalopa Raghu (Original Defendant), Respondent*, I. L. R., 4 Bom. 123.

332. If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bona fide* in his possession on his own

M.S.C.O.
(so far as
relates to
moveable
property).

Procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession.

account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If, after examining the applicant, it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be final.

AN INVESTIGATION under s. 331 of the Civil Procedure Code (prior to the Amendment Act of 1879) is limited to the fact of possession, and is no bar to a subsequent suit brought to try the title to the land in dispute.—*Chinnasámi Pillai* (Plaintiff), Appellant, *v. Krishna Pillai* (Defendant), Respondent, I. L. R., 3 Mad. 104.

A MORTGAGEE who is in possession of the mortgaged property under the mortgage is in possession "on his own account" within the meaning of Act VIII. of 1859, s. 230, and Act X. of 1877, s. 332. A person claiming under Act X. of 1877, s. 332, need not prove his title, but only the fact of possession.—*Shafi-ud-din v. Lochan Singh*, I. L. R., 2 All. 94.

WHERE, in pursuance of an order made in the execution of a decree while Act VIII. of 1859 was in force, certain persons were dispossessed of certain property after that Act was repealed and Act X. of 1877 came into force, and such persons applied under Act X. of 1877, s. 332, to be restored to the possession of such property on certain of the grounds specified in that section, *held* that such persons were entitled to the benefit of that section.—*Shafi-ud-din v. Lochan Singh*, I. L. R., 2 All. 94.

WHEN a person making a claim to certain property under s. 230 of Act VIII. of 1859 has been allowed to bring a suit under that section to try his right to the property, it is sufficient, in the first instance, for him to prove his possession, without proof of his title; but if he takes this course, it is open to the defendant to show that although possession may be in the plaintiff, yet he has no good title to the property, and that he (the defendant) has a better title.—*Dilbasee Koonwaree Mothee and others* (Defendants) *v. Gunga Pershad and another* (Plaintiffs), I. L. R., 5 Cal. 278.

M.S.C.C.
(so far as
relates to
moveable
property).

333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

334. If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

A PURCHASER of immoveable property at a Court-sale, having been obstructed by the defendant, made an application to the Court, under s. 268 of Act VIII. of 1859, for the removal of the obstruction, but subsequently withdrew his application. The Court thereupon made an endorsement upon the application to the effect that as the applicant did not wish to proceed further, no investigation was made. *Held* that no such order had been made as was contemplated by s. 269 of Act VIII. of 1859, that section contemplating, at least, an order against one party or the other; and that, therefore, the provisions contained in the same section, as to the time within which a suit must be brought, did not apply to the case of the plaintiff.—*Bhikhá* (Original Plaintiff), Appellant, *v. Sákárlál* (Original Defendant), Respondent, I. L. R., 5 Bom. 440.

335. If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction, or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be final.

AN order under s. 335 of the Civil Procedure Code is subject to revision by the High Court under s. 622 of that Code. *Shiva Nathaji v. Joma Kashinath* (I. L. R., 7 Bom. 340) followed.—*Sheorāj Singh v. Banwari Das*, I. L. R., 6 All. 172.

WHEN the defendant is in possession by virtue of an order under s. 269 of Act VIII. of 1859, the plaintiff can only succeed on the strength of his own title. *K and R*, two out of five undivided Hindú brothers, sued *V* (a purchaser at an execution-sale of the interest of one of the brothers other than *K* and *R*) for the recovery of certain land of which *V* had obtained possession under s. 269 of Act VIII. of 1859. The lower Courts awarded two-fifths of the land to *K* and *R* as being the amount of their share in the land. *Held* by the High Court that the decree could not be maintained, as *K* and *R*, being two of several co-parceners in undivided property, could not say that they were entitled to a specific share in any portion of that property. They might have sued for a general partition, or for a decree declaring them entitled to joint possession with *V*. *Babaji v. Vasudeo* (I. L. R., 1 Bom. 95) followed. A purchaser at a Court's sale ought not to be put in exclusive possession of the whole undivided land by virtue of a decree against one co-parcener only.—*Kallapa Bin Girmallapa* (Original Plaintiff), Appellant, *v. Venkatesh Vinayak* (Original Defendant), Respondent, I. L. R., 2 Bom. 676.

I.—Of Arrest and Imprisonment.

336. A judgment-debtor may be arrested in execution of a decree M.S.C.O.

Place of judgment-debt- at any hour and on any day, and shall, as soon
or's imprisonment. as practicable, be brought before the Court, and
his imprisonment may be in the civil jail of the district in which the
Court ordering the imprisonment is situate, or, when such jail does not
afford suitable accommodation, in any other place which the Local
Government may appoint for the confinement of persons ordered by the
Courts of such district to be imprisoned :

Provided as follows :—

(a) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open. But, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found : Provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who, according to the customs of the country, does not appear in public, the officer shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for her to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest :

(b) when the decree in execution of which a judgment-debtor is arrested is a decree for money, and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

Proviso.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money, and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX. to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he places all his property in possession of a receiver appointed by the Court.

If, after such publication, the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will, within one month, apply under section 344 to be declared an insolvent, the Court shall release him from arrest :

But if he fails so to apply, the Court may either direct the security to be realized, or commit him to jail in execution of the decree.

In the case of a surety such security may be realized in manner provided by section 253.

Act X. of 1877, s. 336. cl. 5, applies to Small Cause Court debtors, and such persons can obtain the benefit of chap. xx. of that Act by applying to a Court which has jurisdiction under that chapter.—*Syed Moidin v. Sundaramurthia*, I. L. R., 2 Mad. 9.

WARRANT of arrest directed, notwithstanding previous proceedings in attachment, the Court being satisfied that the judgment-debtor was determined to evade, if possible, the payment of his debt.—*Chena Pemáji v. Ghelábhái Nárandás*, I. L. R., 7 Bom. 301.

It is not necessary that a special order of Court should be made, empowering an officer authorized to arrest a purda-náshin lady to enter the zanáná of the house in which she resides. Under s. 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zanáná, in order to effect the arrest.—*S. M. Kadumbinee Dossee v. S. M. Koylash-kaminee Dossee*, I. L. R., 7 Cal. 19.

M.S.C.C. 337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, (if any) to which he is liable, be sooner paid.

M.S.C.C. 338. The Local Government may from time to time prescribe scales, Scales of sub-sistence-allowances. graduated according to rank, race, and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

M.S.C.C. 339. No judgment-debtor shall be arrested in execution of a decree Judgment-debtor's sub-sistence-money. unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

340. Sums disbursed by the decree-holder for the subsistence of the M.S.C.C.

Subsistence-money to be judgment-debtor in jail shall be deemed to be costs in suit. costs in the suit :

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

341. The judgment-debtor shall be discharged from jail, M.S.C.C.

Release of judgment-debtor.

(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail ; or

(b) on the decree being otherwise fully satisfied ; or

(c) at the request of the person on whose application he has been imprisoned ; or

(d) on such person omitting to pay the allowance as hereinbefore directed ; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided ; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled :

Provided that in the second, third, and fifth cases mentioned in this section the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt ; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

In the execution of a decree payable by instalment the judgment-debtor cannot be arrested and imprisoned separately for default in the payment of each instalment.—*Dámondar Shaligrám v. Malhári*, I. L. R., 7 Bom. 106.

THE decree in an administration-suit directed A, a party to the suit, to pay over a sum of money, which she admitted was in her hands, to her own attorney in the suit, to be applied by him as directed by the decree. A refused to pay over the money, and she was imprisoned for disobedience to the Court's order. After she had been in prison six months, she applied to the Judge of the Court below, under Act X. of 1877, s. 341, to be discharged. This order was refused. *Held*, on appeal, that the proceeding under which A had been imprisoned was not in execution of a decree, but that she was imprisoned under process of contempt, and that the provisions of ss. 341 and 342 did not apply to the case.—*Martin v. Lawrence*, I. L. R., 4 Cal. 655.

342. No person shall be imprisoned in execution of a decree for a longer period than six months ; M.S.C.C.

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

When not to exceed six weeks.

HELD by a majority of the Full Bench (Sargent and Bayley, JJ., dissenting) that a judgment-debtor, imprisoned in satisfaction of the decree against him under Act VIII. of 1859, is not entitled, under Act X. of 1877, to be released on the coming into operation of the latter Act, if he have then been imprisoned for more than six months but less than two years.—In the matter of the Petition of Ratanji Kalianji and six others, I. L. R., 2 Bom. 148.

THE decree in an administration-suit directed A, a party to the suit, to pay over a sum of money, which she admitted was in her hands, to her own attorney in the suit, to be applied by him as directed by the decree. A refused to pay over the money, and she was imprisoned for disobedience to the Court's order. After she had been in prison for six months, she applied to the Judge of the Court below, under Act X. of 1877, s. 341, to be discharged. This order was refused. *Held*, on appeal, that the proceedings under which A had been imprisoned was not in execution of a decree, but that she was imprisoned under process of contempt, and that the provisions, of ss. 341 and 342 did not apply to the case.—*Martin v. Lawrence*, I. L. R., 4 Cal. 655.

THE defendant was arrested before judgment, and, on the 5th February, 1883, committed to jail under s. 481 of the Civil Procedure Code. On the 6th March following, a decree in the suit was passed against him. On the 28th July, the defendant being then still in jail under the order of the 5th February, the plaintiff took out a fresh warrant of arrest in execution of the decree, and sought to have the defendant further imprisoned for the full period of six months limited by s. 342 of the Code. *Held* that the defendant could be re-committed to jail, in execution of the decree, only for such a period as, together with the period of imprisonment that had elapsed since the passing of the decree, would complete a period of six months, and that, consequently, he would be entitled to be liberated on the 5th September, 1883. Imprisonment under s. 581 becomes, after decree, imprisonment in execution of the decree, and the imprisonment suffered after that date must consequently be taken into consideration in calculating the period of six months, which, by s. 342 of the Code, is the limit allowed for an imprisonment in execution of a decree.—*Ghanashamdás Goorsánull v. Johárimull Kedárináth*, I. L. R., 7 Bom. 431.

M.S.C.C.

343. The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

WHERE a warrant issued by a Subordinate Court, directing the nazir to arrest a judgment-debtor in execution of a decree, was entrusted by the nazir to a subordinate for execution by indorsing his name upon it, *held* that there is nothing in the Civil Procedure Code to prohibit a nazir from authorizing a deputy to execute a warrant of arrest for him, and that his indorsement must be regarded as *prima facie* evidence of the authority of the person to whom the warrant is delivered to execute it. *Held* that it is most desirable, when the nazirs of the Subordinate Courts delegate the duty of executing warrants of arrest, that they should confer the authority in more clear and explicit terms than are expressed by a mere indorsement, and that they should be careful in selecting proper persons to discharge that duty, bearing in mind, as far as circumstances permit, the position and caste of the party to be arrested, so as to avoid, through the medium of Court-process, subjecting any such party to personal indignity or offence. Further, that it is important that the person chosen should be made acquainted with the contents of the warrant, in order

that he may be able to inform the judgment-debtor at whose suit and for what amount he is being taken into custody. Where a warrant for the arrest of the judgment-debtor had been executed, and an indorsement thereon, professedly under s. 343 of the Civil Procedure Code, was irregularly made by the naib nazir, he not having been "the officer entrusted with the execution of the warrant," *held* that such irregularity did not invalidate the arrest.—*Abdul Kurim v. J. Bullen*, I. L. R., 6 All. 385.

CHAPTER XX.

OF INSOLVENT JUDGMENT-DEBTORS.

344. Any judgment-debtor arrested or imprisoned in execution of

Power to apply for de- a decree for money, or against whose property
claration of insolvency. an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

A PERSON applying under Act X. of 1877, s. 344, must satisfy the Court that his case comes within the provisions of s. 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under s. 588—*Muntaz Hossein v. Brij Mohun Thakoor*, I. L. R., 4 Cal. 888. Followed in I. L. R., 6 Cal. 168.

THERE is no appeal from an order made under Act X. of 1877, s. 351, refusing to grant an application to be made an insolvent. The appeal allowed under s. 588, cl. 17, so far as an order under s. 351 is concerned, is on behalf of the judgment-creditor only.—*Juggutjeehun Gooptoo v. Haro Coomar Pal*, I. L. R., 5 Cal. 719. Dissented from in I. L. R., 6 Cal. 168.

THE lower Court ordered the attachment of a house belonging to the judgment-debtor in execution of a money-decree passed against him by that Court. The judgment-debtor then applied to be declared an insolvent under s. 344 of the Civil Procedure Code, Act X. of 1877. *Held* that it could not entertain the application.—*Purbhudas Velji v. Chugun Raichand*, I. L. R., 8 Bom. 196.

A JUDGMENT-DEBTOR, having been arrested in 1871, offered to place his estate at the disposal of the Court, and was examined on oath as to the particulars of the estate, and discharged from custody. His estate was never taken possession of, and part of it was subsequently disposed of by him to a stranger. *Held* that he was not liable to be arrested again in execution of the decree.—*Venkatkrishna v. Coelho*, I. L. R., 6 Mad. 170.

THE Deputy Commissioner of Akyab, sitting as District Judge, has power to entertain applications under Act X. of 1877, chap. xx. S. 6 (d) of that Act imposes no obstacle in the way of his dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the Recorder of Rangoon sitting as an Insolvent Court in Akyab" within the meaning of that section.—*In re Abdool Hamed*, I. L. R., 4 Cal. 94.

THE effect of Act X. of 1877, s. 5, coupled with sch. 2, is to render the whole of chap. xx. (relating to insolvent debtors) inapplicable to a Mufassal Small Cause Court, notwithstanding the words "any Court other than a District Court" and any Court situate within his district, which occur in that section. Consequently the Government Resolution of 3rd April, 1878, investing the Judge of the Small Cause Court at Ahmedabad with powers, under the said chapter, to adjudicate in insolvency-matters, is *ultra vires* and invalid.—*Lallu Ganesh v. Ranchhod Khandas*, I. L. R., 2 Bom. 641.

WHEN an application to be declared an insolvent, under s. 344 of the Civil Procedure Code, was preferred, the requirements of that section had not been fulfilled, as the applicant had not been arrested or imprisoned in execution of a decree for money, nor had his property been attached in execution of such a decree. Eleven days after the application had been preferred, the applicant's property was attached in execution of such a decree. One of the creditors subsequently objected to the application on the ground that when it was preferred the requirements of s. 344 had not been fulfilled. *Held* that the application should not on that ground have been dismissed.—*Makhan Lal v. Gulzari Mal*, I. L. R., 6 All. 289.

Contents of application.

345. The application, when made by the judgment-debtor, shall set forth—

(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody;

(b) the amount, kind, and particulars of his property, and the value of any such property not consisting of money;

(c) the place or places in which such property is to be found;

(d) his willingness to put it at the disposal of the Court;

(e) the amount and particulars of all pecuniary claims against him; and

(f) the names and residences of his creditors, so far as they are known to, or can be ascertained by, him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

346. The application shall be signed and verified by the applicant

Subscription and verification of application.

in manner hereinbefore prescribed for signing and verifying plaints.

347. The Court shall fix a day for hearing the application, and

Service of copy of application and notice.

shall cause a copy thereof, with a notice in writing of the time and place at which it will be

heard, to be stuck up in Court and served at the applicant's expense—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder and on the other creditors (if any) mentioned in the application:

Where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish, at the applicant's expense, the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them.

348. The Court may also, if it thinks fit, cause a like copy and

Power to serve other creditors.

notice to be served on any other person alleging himself to be a creditor of the applicant, and applying for leave to be heard on the application.

349. Where the judgment-debtor is under arrest, the Court may, pending the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

A SECURITY-BOND given under the provisions of s. 349 of the Code of Civil Procedure, 1882, for the production of a judgment-debtor when called upon, cannot be enforced summarily—*Moidin v. Chandu*, I L. R., 7 Mad. 273.

350. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

Declaration of insolvency and appointment of Receiver.

351. If the Court is satisfied—

- (a) that the statements in the application are substantially true;
 - (b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred, or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time;
 - (c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts, or given an unfair preference to any of his creditors by any payment or disposition of his property;
 - (d) that he has not committed any other act of bad faith regarding the matter of the application,
- the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a receiver of his property, or, if it does not appoint such receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order rejecting the application.

AN ORDER refusing to grant an application to be made an insolvent is appealable under cl. 17, s. 588 of the Code of Civil Procedure. Such an order must be considered to be one made under s. 351.—*Nubbi Biksh v. Chasni*, I L. R., 6 Cal. 168.

A PERSON applying under Act X. of 1877, s. 351, must satisfy the Court that his case comes within the provisions of s. 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under s. 588.—*Mumtaz Hossein v. Brij Mohun Thakoor*, I L. R., 4 Cal. 888. Followed in I L. R., 6 Cal. 168.

J, IN pursuance of a previous agreement with B, and on being pressed by B, who had a pecuniary claim against him, assigned to B the whole of his property by way of sale, in consideration in part of B's pecuniary claim against him. *Held* that by such assignment J did not give B an "undue preference" to his other creditors,

within the meaning of s. 351 of Act X. of 1877.—*Joakim (Appellant) v. The Secretary of State for India and others (Respondents)*, I. L. R., 3 All 530.

A JUDGMENT-DEBTOR, having applied to be declared an insolvent under s. 344 of the Code of Civil Procedure, entered the name of A in the list of his creditors, together with the amount of the debt. No creditors appearing to oppose the application or prove their debts, the Court, without framing a schedule as required by s. 352, declared the judgment-debtor an insolvent under s. 351. In a suit brought by A to recover the debt, *held* that as the provisions of s. 352 had not been followed, the declaration under s. 351 could not operate as a decree between the insolvent and A, and that A was entitled to a decree.—*Arunáchala v. Ayyávu*, I. L. R., 7 Mad. 318.

AN APPEAL lies against an order passed under section 351 of Act X. of 1877, although it was an order refusing to declare petitioner an insolvent. The words used in cl. d of s. 351, "the matter of the application," embrace the insolvency, and all the facts and circumstances material to explain the insolvency. Acts of bad faith towards creditors just at the period at which the applicant was contemplating insolvency may be held to be part of the matter of the application. A Judge would not be exercising a right discretion under s. 351 if he refused relief in the case of persons who, although knowing that they had not the means of paying at the time the debt was contracted, yet honestly believed upon reasonable grounds that they would have the means of paying eventually.—*Bávachi Packi v. Pierce, Leslie, & Co.*, I. L. R., 2 Mad. 219.

352. The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall, by order, determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

A copy of every such schedule shall be stuck up in the Court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent firm, or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

A JUDGMENT-DEBTOR was declared an insolvent, and a receiver of his property appointed under s. 351 of the Civil Procedure Code, and his creditors were ordered to come forward and prove their claims within a certain time. No creditor came forward for that purpose within such time, and in consequence the case was struck off the file, and the order appointing a receiver cancelled, and no schedule was framed under s. 352. Subsequently a creditor applied to have his name entered in such schedule. *Held* that the applicant, notwithstanding no schedule had been framed, was an "unscheduled" creditor, and was therefore entitled, under s. 353 of the Civil Procedure Code, to make the application.—*Madho Prasad v. Bhola Nath*, I. L. R., 5 All. 268.

In July, 1878, a person was declared an insolvent under the provisions of Chapter XX. of the Civil Procedure Code. Only one creditor then proved his debt, and no schedule was framed. This creditor having applied for the sale of property belonging to the insolvent, another creditor, in May, 1883, applied to prove his debt, and to have his name inserted in the schedule which the Court then ordered to be framed. *Held* that such application could not be treated as made under s. 353, as no schedule had been framed, but must be regarded as in the nature of a tender of proof of debt under s. 352; that it was governed by art. 178 of the Limitation

Act, 1877; and that, the right to apply having accrued at the date of the declaration of insolvency, the application was beyond time.—*Parshadi Lal v. Chunni Lal*, I. L. R., 6 All. 142.

A JUDGMENT-DEBTOR, arrested and imprisoned in execution, applied to be declared an insolvent, and included a mortgage-debt in his application. Notice was issued to the mortgagee, who failed to appear and prove his claim, and was consequently omitted from the schedule prepared under s. 352 of the Code of Civil Procedure. A receiver was appointed under s. 354; the whole of the property of the insolvent was made over to the receiver, including the nine fields mortgaged, which the insolvent held as tenant of the mortgagee. The receiver sold one out of the nine fields to satisfy the creditors entered in the schedule, and ultimately restored the remaining eight fields to the judgment-debtor. The mortgagee then sued to eject the judgment-debtor for default in payment of rent. The latter pleaded his discharge under s. 355. *Held* that the discharge did not affect the mortgage-debt, and that a receiver is bound, as a condition of dealing with mortgaged property, in every case to pay off the mortgage, even when the mortgagee has not sought to be placed in the schedule, the position of the mortgagee being essentially different from that of the unsecured creditor. Case of *Chotalal v. Nalinsa* (printed Judgments for 1882, p. 80) distinguished.—*Shridhar Nairayan v. Atmaram Govind*, I. L. R., 7 Bom. 455.

353. Any creditor of the insolvent who is not mentioned in such

Applications by unschedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature, or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature, or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections (if any), may comply with or reject the application.

354. Every order under section 351 shall be published in the local

Effect of order appoint- official Gazette, and shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not.

355. The Receiver so appointed shall give such security as the

Receiver to give security Court may direct, and shall possess himself of and collect assets. all such property, except as aforesaid;

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power

Discharge of insolvent. for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

Duty of Receiver

356. The Receiver shall proceed under the direction of the Court—

(a) to convert the property into money :

(b) to pay thereout debts, fines, and penalties (if any) due by the insolvent to Government ;

(c) to pay the said decree-holder's costs :

(d) to discharge, according to their respective priorities, all debts secured by mortgage of the insolvent's property :

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference :

and such Receiver may retain, as a remuneration for the perform-

His right to remunera-
tion

ance of his duties, a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of

Delivery of surplus.

the commission so retained being deemed a distribution), and shall deliver the surplus (if any) to the insolvent or his legal representative :

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government, or held or let for agricultural purposes, shall be made by the Receiver ; but, after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances (if any) existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid ; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 (both inclusive) as he thinks fit, and subject to the provisions of those sections, so far as they may be applicable ; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

357. An insolvent discharged under section 351 or 355 shall not

Effect of discharge.

be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 266, and except the property vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

358. If the aggregate amount of the scheduled debts is two hundred

Declaration that insol-
vent is discharged from
liability.

rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall, declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

AN insolvent, who had procured, and taken, and acted on an insolvency order, which had been granted to him because of the withdrawal of the opposition of his creditors, by reason solely of his engagement to pay a certain sum monthly until the whole of his debts should be discharged, after his scheduled debts had been satisfied to the extent of one-third, applied under s. 358 of the Civil Procedure

Code to be declared discharged from further liability in respect of his debts. *Held* that, under the circumstances, his application had been properly refused.—*Downes v Richmond*, 1. L. R., 5 All. 258.

Procedure in case of dishonest applicant.

359. Whenever, at the hearing under section 350, it is proved that the applicant has—

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(b) fraudulently concealed, transferred, or removed any property; or

(c) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal.

Or the Court may, if it thinks fit, send him to the Magistrate to be dealt with according to law.

360 The Local Government may, by notification in the official M.S.C.C.

Investment of other Court with powers of District Courts.

Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any

Court situate in his district, and so invested, any case instituted under section 344.

Any Court so invested may entertain any application under section 344 by any person arrested in execution of a decree of such Court.

Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab, and Bassein, where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property, or any part thereof, is situate outside British Burma.

PART II.

OF INCIDENTAL PROCEEDINGS.

CHAPTER XXI.

OF THE DEATH, MARRIAGE, AND INSOLVENCY OF PARTIES.

No abatement by party's death, if right to sue survives.

361. The death of a plaintiff or defendant M.S.C.C. shall not cause the suit to abate if the right to sue survives.

Illustrations.

(a) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree. The right to sue survives to C, and the suit does not abate.

(b.) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(c.) A sues B for libel. A dies. The right to sue does not survive, and the suit abates.

(d.) A, a member of a Hindú joint family under the Mitákshará law, institutes a suit for partition of the family-property. A dies leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate.

M.S.C.C.

362. If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

M.S.C.C.

363. If there be more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

If a plaintiff dies after decree, his representatives are not bound to apply within 60 days to be made parties to the suit, but have the same time to file an appeal as the plaintiff would have had. The Civil Procedure Code, ss. 363—365, and the Limitation Act, sch ii, art. 171, do not apply to the case of a plaintiff dying after decree.—Rāmanāda Sāstri, a minor under the guardianship of the executors Muttusāmi Ayyar and another (Plaintiffs), Appellants, v. Minatchi Ammal and another (Defendants), Respondents, I. L. R., 3 Mad. 236.

SCH. 2, art. 171 of the Limitation Act, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under Act X. of 1877, s. 363 or s. 365, does not apply to the representative of a deceased judgment-debtor claiming admission to continue execution-proceedings commenced by him. Act X. of 1877 does not provide that applications for execution shall, like suits, abate by the death of the judgment-creditor. Such a representative may, therefore, come in at any time, as his coming in is contemplated in sch 2, art. 179, expl. 1 of Act XV. of 1877, subject always to the same conditions as would apply to his principal.—Gulābdas v. Lakshman Narhar, I. L. R., 3 Bom 221.

M.S.C.C.

364. If, within the time limited by law, no application be made to the Court by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs;

and the legal representative (if any) of the deceased plaintiff shall be made a party, and shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

M.S.C.C.

365. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, where the right to sue survives, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.

PER MITTER, J. (Garth, C.J. *dubitante*).—Notwithstanding that s. 582 of the Code of Civil Procedure does not expressly direct that the word 'plaintiff' occurring in s. 366 shall be held to include an 'appellant,' yet the power conferred by s. 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff may, by analogy, be taken to be conferred on the Appellate Court. *Lakshmbai v. Bulkrishna* (I. L. R., 4 Bom. 654) followed.—*Rajmonee Dabee v. Chunder Kant Sandel*, I. L. R., 8 Cal. 440.

IF A plaintiff dies after decree, his representatives are not bound to apply within 60 days to be made parties to the suit, but have the same time to file an appeal as the plaintiff would have had. The Civil Procedure Code, ss. 363–365, and the Limitation Act, sch. ii, art. 171, do not apply to the case of a plaintiff dying after decree.—*Rāmanāda Sāstri*, a minor under the guardianship of the executors *Muttasāmi Ayyar* and another (Plaintiffs), Appellants, v. *Miritchi Ammal* and another (Defendants), Respondents, I. L. R., 3 Mad. 236.

SCH. 2, art. 171 of the Limitation Act, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under Act X. of 1877, s. 363 or s. 365, does not apply to the representative of a deceased judgment-debtor claiming admission to continue execution-proceedings commenced by him. Act X. of 1877 does not provide that applications for execution shall, like suit, date by the death of the judgment-creditor. Such a representative may, therefore, come in at any time, as his coming in is contemplated in sch. 2, art. 171, ex cl. 1 of Act XV. of 1877, subject always to the same conditions as would apply to his principal.—*Gulābdās v. Lakshman Narhar*, I. L. R., 3 Bom. 221.

A SOLE plaintiff having died after decree, an application was made more than 60 days after his death, by his legal representative, for an order that his name might be substituted on the record for that of the original plaintiff, and that a sum of money to which the original plaintiff, if alive, would have been entitled, might be paid to him, the legal representative. Held that s. 372 of the Civil Procedure Code did not apply to the case, that section contemplating a proceeding before the determination of the suit; and, further, that the application was barred by Act XV. of 1877, sch. ii, art. 171. Held also that s. 232 had no application. S. 365 of the Civil Procedure Code (amended by Act XII. of 1879, s. 61) does not apply to the case of a sole plaintiff dying after decree, the right to sue being merged in the decree.—*Cally Churn Mullick* (Plaintiff) v. *Bhuggobutty Churn Mullick* and others (Defendants), 5 Cal. Law Rep. 108.

A JUDGMENT-DEBTOR applied that an execution-sale of property belonging to him should be set aside, as the decree-holder was dead when such sale took place, and such sale was in consequence invalid. This application was disposed of by the Court executing the decree in the presence of the judgment-debtor and purchaser. The Court held that the fact of such sale having taken place after the death of the decree-holder's death was no ground for setting it aside, and disallowed such application, and made an order confirming such sale. Held per *Pearson, J.*, that the application for the execution of the decree abated on the death of the decree-holder, not having been prosecuted by his legal representative, and such sale was under the circumstances improper and invalid, and the order confirming it should be set aside. Per *Spankie, J.*, that such sale was not invalid by reason of the decree-holder's death before it took place. The order confirming it, however, was improper, and should be reversed, and the case should be remanded to be dealt with under the provisions of ss. 365 and 366 of Act X. of 1877, as the Court executing the decree should have proceeded under those sections. Per *Oldfield, J.*, and *Straight J.*, that the death of the decree-holder prior to such sale did not render it void. The provisions of ss. 365 and 366 of Act X. of 1877 could not be adapted to execution-proceedings. As such sale had been published and conducted according to law, it had properly been confirmed.—*Dulari* (Judgment-debtor) v. *Mohan Singh* (Auction-purchaser), I. L. R., 3 All. 759.

366. If, within the time limited by law, no such application be made to the Court by any person claiming to

Abatement where no application by representative of deceased plaintiff.

made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the

M.S.C.O.

suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

Explanation.—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

PER MITTER, J. (Garth, C.J., *dubitante*).—Notwithstanding that s. 582 of the Code of Civil Procedure does not expressly direct that the word 'plaintiff' occurring in s. 366 shall be held to include an 'appellant,' yet the power conferred by s. 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff may, by analogy, be taken to be conferred on the Appellate Court. *Lakshimibai v. Balkrishna* (I. L. R., 4 Bom 654) followed.—*Rajmonee Dabee v. Chunder Kant Sandel*, I. L. R., 8 Cal. 440.

AN APPELLATE COURT rejected the application of the legal representative of a deceased sole plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the Appellate Court, passed under the first paragraph of s. 366 of Act X of 1877, not being appealable under cl. 18, s. 588, of that Act, nor being a decree within the terms of s. 2, from which a second appeal would lie, was not appealable.—*Ahmad Ata (Plaintiff) v. Mata Badal Lal (Defendant)*, I. L. R., 3 All. 844.

A JUDGMENT-DEBTOR applied that an execution-sale of property belonging to him should be set aside, as the decree-holder was dead when such sale took place, and such sale was in consequence invalid. This application was disposed of by the Court executing the decree in the presence of the judgment-debtor and purchaser. The Court held that the fact of such sale having taken place after the decree-holder's death was no ground for setting it aside, and disallowed such application, and made an order confirming such sale. *Held per* Pearson, J., that the application for the execution of the decree abated on the death of the decree-holder, not having been prosecuted by his legal representative, and such sale was under the circumstances improper and invalid, and the order confirming it should be set aside. *Per* Spankie, J., that such sale was not invalid by reason of the decree-holder's death before it took place. The order confirming it, however, was improper, and should be reversed, and the case should be remanded to be dealt with under the provisions of ss. 365 and 366 of Act X. of 1877, as the Court executing the decree should have proceeded under those sections. *Per* O'Field, J., and Straight J., that the death of the decree-holder prior to such sale did not render it void. The provisions of ss. 365 and 366 of Act X. of 1877 could not be adapted to execution-proceedings. As such sale had been published and conducted according to law, it had properly been confirmed.—*Dulari (Judgment-debtor) v. Mohan Singh (Auction-purchaser)*, I. L. R., 3 All. 759.

M.S.C.C.

367. If any dispute arise as to who is the legal representative of a

Procedure in case of dispute as to representative of deceased plaintiff.

deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

368. If there be more defendants than one, and any of them die M.S.C.C.

Procedure in case of death of one of several defendants,

or of sole, or sole surviving, defendant.

before decree, and the right to sue does not survive against the surviving defendant or defendants alone,

and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description, and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit ;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant, and had been a party to the former proceedings in the suit :

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

PER MITTER, J. (Garth, C.J., *dubitante*)—Notwithstanding that s. 582 of the Code of Civil Procedure does not expressly direct that the word 'plaintiff' occurring in s. 366 shall be held to include an 'appellant,' yet the power conferred by s. 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff may, by analogy, be taken to be conferred on the Appellate Court. *Lakshmbai v. Balkrishna* (I. L. R., 4 Bom. 654) followed.—*Rajmonee Dabee v. Chunder Kant Sandel*, I. L. R., 8 Cal. 440.

AN APPEAL having been declared to have abated on the 12th December, 1891, under s. 368 of the Code of Civil Procedure, 1877, because the appellant had not applied within sixty days of the date of the death of the respondent to bring in his representative, an application was made in January, 1892, to set aside the order, and was heard after the Code of Civil Procedure, 1882, came into force. *Held* that the application must be disposed of under the Code of Civil Procedure as it stood at the date of the application, and, therefore, that it was not open to the appellant to satisfy the Court that he had sufficient cause for not making the application within the prescribed period. S. 371 of the Code of Civil Procedure does not apply to the case in which a defendant or respondent dies.—*Suri v. Sitarāma*, I. L. R., 7 Mad. 195.

PROCEDURE analogous to that laid down in Act X. of 1877, s. 368, in respect to the death of a defendant, must be applied in the case of the death of a respondent. Where, therefore, a respondent dies during the pendency of an appeal, it is for the appellant to take the initiative, and he is at liberty to select one or more persons to defend the appeal ; and no person, other than the person so selected, has a right to force himself into the proceedings, and to claim to have his name entered as representative of the deceased respondent against the appellant's consent. Persons so introduced on the record may or may not be the real representatives of the deceased respondent, but the merits of their claim to be such, on the ground of any right or status, such as that of adoption, is immaterial to the determination of the appeal.—*Lakshmbai v. Balkrishna*, I. L. R., 4 Bom. 654.

IN a suit for the recovery of land against a sole defendant, the latter died before the hearing. Sixty-three days after the death of the defendant, the plaintiff applied

to the Court to enter on the record the legal representative of the deceased defendant. On the 22nd of November, 1880, the Court rejected the application under the provisions of Act XV of 1877, sch ii, cl. 171B, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but this application was also rejected on the 20th of September, 1881. On appeal to the High Court, *held* that no appeal lay against the order of the 20th of September, 1881, and that an appeal against the order of the 22nd of November, 1880, was out of time; but that the High Court would take cognizance of the case under s. 622 of the Code of Civil Procedure. *Held* also that the application which was rejected on the 22nd of November, 1880, was an application under s. 372, and not under s. 368 of the Code of Civil Procedure, and that the applicant was entitled to make the application within three years, as allowed by Act XV. of 1877, sch. ii., cl. 178. *Gocool Chunder Gossamee v. Administrator-General of Bengal* I. L. R., 5 Cal. 726; S. C., 5 C. L. R. 108) referred to.—*Benode Mohini Chowdhrai v. Sharat Chunder Dey Chowdhry and others*, I. L. R., 8 Cal. 837.

M.S.C.C. 369. The marriage of a female plaintiff or defendant shall not
 Suit not abated by marriage of female party. cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband where the husband is by law entitled to the subject-matter of the decree.

M.S.C.C. 370. The bankruptcy or insolvency of a plaintiff in any suit which
 When plaintiff's bankruptcy or insolvency bars suit. his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

M.S.C.C. 371. When a suit abates or is dismissed under this chapter, no
 Effect of abatement or dismissal. fresh suit shall be brought on the same cause of action.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

WHERE a suit was declared abated in 1868 under s. 102 of Act VIII. of 1859 for non-prosecution by the representative of a deceased plaintiff, *held* that the Civil Procedure Code, s. 271, was no bar to a fresh suit instituted in 1880 on the same

cause of action.—Balikunath Ramen Menon (3rd Defendant), Appellant, *v.* Mulankaji Sri Kumaran Nambudiri (Plaintiff), Respondent, I. L. R., 3 Mad. 31.

UPON the death of a sole plaintiff, if no application to revive is made within sixty days from the date of the plaintiff's death, the suit abates. But the Court may, under Act X. of 1877, s. 371, revive the suit on the application of the legal representative of the plaintiff within three years from the time when the right to apply accrues, if he can show that he was prevented by sufficient cause from continuing the suit.—Bhoynub Dass Johurry *v.* Doman Thakoor, I. L. R., 5 Cal. 139.

THE defendants attached certain property, which the plaintiffs alleged belonged to them. The plaintiffs preferred a claim to the property under s. 246 of Act VIII. of 1859: this claim was disallowed on the 15th August, 1877. In June, 1878, the plaintiffs brought a suit to establish their title to the property attached, and for confirmation of possession. Pending this suit, the principal defendant died, and the plaintiffs applied for an order to substitute certain persons as defendants. The Court thereupon directed the issue of a summons on the defendants proposed by the plaintiffs to appear and defend the suit; but the plaintiffs failing to pay the costs of the service of this summons, the suit was dismissed on the 14th March, 1879. On the 4th March, 1880, the plaintiffs again brought a suit to establish their title to the same property, and for confirmation of possession. *Held* that the order of the 15th August, 1877, not being an order passed under s. 283 of Act X. of 1877, art. 11 of sch. ii. of Act XV. of 1877 did not apply, but that art. 120 of sch. ii. was applicable; and that as the first suit had not been dismissed upon the merits, the plaintiffs were entitled to maintain the second suit.—Bessessur Bhugut *v.* Murlu Sahu, I. L. R., 9 Cal. 163.

372. In other cases of assignment, creation, or devolution of any M.S.C.C.

Procedure in case of assignment pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections (if any), be continued by or against the person to whom such interest has come, either in addition to, or in substitution for, the person from whom it has passed, as the case may require.

THE words, "pending the suit," in Act X. of 1877, s. 372, relate to a suit in which no final order has been made.—Gocool Chunder Gossamce *v.* Administrator-General of Bengal, I. L. R., 5 Cal. 726.

THE "cases of assignment, creation, or devolution" of any interest pending a suit, contemplated by s. 372 of the Civil Procedure Code, are those in which "the person to whom such interest has come" is arrayed on the same side in the suit as "the person from whom it has passed." *Held* therefore that a compromise in a suit for land between the plaintiff and one of the defendants, whereby the latter consented to a decree being given to the former for half the land, was not a "case of assignment" of an interest in such land within the meaning of that section.—Radha Prasad Sing *v.* Rajendra Kishore Singh, I. L. R., 5 All. 209.

AFTER a decree had been made in a suit, the case was, in 1875, struck out of the book for want of prosecution. No steps were taken to have it restored. In 1879, both the plaintiff and the defendant died. In the same year the heirs of the plaintiff instituted a suit against the administrator of the defendant for the purpose of having the decree in the original suit carried out. This suit was dismissed by the Court of first instance under Act X. of 1877, s. 13; but the Appellate Court, holding that the original suit was subsisting, and might be re-constituted, directed that the plaintiffs should be allowed to amend their plaint by putting it into the form of a petition under s. 372 of the same Act. On a petition by the plaintiffs praying that the original suit might be revived and restored to the board, *held* that the application was not barred under sch. 2, art. 178. Even if art. 178 was applicable, the application would not be barred, limitation running from the time when the suit was allowed to be re-constituted.—Govind Chunder Goswami *v.* Bungun Money, I. L. R., 6 Cal. 60.

A SUIT was instituted by the trustees appointed under a will against the executrix for the purpose of having the trusts of the will carried into execution. A decree was made and certain directions were given for the purpose of having a scheme settled by which the trusts were to be carried out; but before the scheme was finally settled and approved, and while the proceedings were pending, the case was struck out of the board for want of prosecution. Subsequently both the plaintiff and defendant died. The heirs of the plaintiff then instituted a suit against the Administrator-General as representing the estate of the defendant for carrying the trusts into execution, and prayed that their suit might be considered as supplemental to the original one. *Held* that the original suit, though no longer upon the board, was capable of revival, and that, if no person were living whose consent might be obtained, or to whom notice might be given, the Court might give leave without any such consent or notice, and that the proper course to pursue was to allow the plaintiffs to amend their plaint by putting it in the form of a petition under Act X. of 1877, s. 372, the defendant being at liberty to put in any answer which he might have done, if the proceeding had been by petition in the first instance.—*Gocool Chunder Gossamee v. Administrator-General of Bengal*, I. L. R., 5 Cal. 726.

IN A suit for the recovery of land against a sole defendant, the latter died before the hearing. Sixty-three days after the death of the defendant, the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant. On the 22nd of November, 1880, the Court rejected the application under the provisions of Act XV. of 1877, sch. ii., cl. 171B, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but this application was also rejected on the 20th of September, 1881. On appeal to the High Court, *held* that no appeal lay against the order of the 20th of September, 1881, and that an appeal against the order of the 22nd of November, 1880, was out of time; but that the High Court would take cognizance of the case under s. 622 of the Code of Civil Procedure. *Held* also that the application which was rejected on the 22nd of November, 1880, was an application under s. 372, and not under s. 368 of the Code of Civil Procedure, and that the applicant was entitled to make the application within three years, as allowed by Act XV. of 1877, sch. ii., cl. 178. *Gocool Chunder Gossamee v. Administrator-General of Bengal* (I. L. R., 5 Cal. 726; S.C., 5 C. L. R. 108) referred to.—*Benode Mohini Chowdhrain v. Sharat Chunder Dey Chowdhry and others*, I. L. R., 8 Cal. 837.

CHAPTER XXII.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

M.S.C.C. 373. If, at any time after the institution of the suit, the Court is satisfied, on the application of the plaintiff, (a) Power to allow plaintiff to withdraw with liberty to bring fresh suit. that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit, or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

The proviso in the 3rd clause of s. 373 of the Code of Civil Procedure does not deprive the Court of power to permit one of several co-plaintiffs to withdraw

unconditionally from a suit, even though his co-plaintiffs do not consent to his withdrawal.—*Mohamaya Chandhrain* (Defendant), Appellant, *v.* *Durga Charun Shaha*, by his mother and guardian, *Rukmini* (Plaintiff), Respondent, 9 Cal. Law Rep 332.

HELD by the Full Bench (Stuart, C.J., dissenting).—That the Courts of Revenue in the North-Western Provinces, in those matters of procedure upon which the Rent Act (XII. of 1881) of those Provinces is silent, are governed by the provisions of the Civil Procedure Code. The principle of decision in *Nilmoni Singh Deo v. Taranath Mukerjee* (I. L. R., 9 Cal. 295) followed. *Held*, therefore, that the procedure provided by ss. 43 and 373 of the Civil Procedure Code is applicable to suits tried under the N. W. P. Rent Act, 1881.—*Madho Prakash Singh v. Murli Manohar*, I. L. R., 5 All. 406.

THE plea that the plaintiff had improperly been permitted to withdraw from a former suit with liberty to bring the present one, which had not been taken in the lower Courts, and was not taken in the memorandum of second appeal, was not permitted to be urged at the hearing of the second appeal. *Quare*.—Whether under s. 373 of Act X. of 1877 the Court ought to permit the plaintiff to withdraw from the suit with liberty to bring a fresh suit on the ground that the defence to the suit was such that the suit must fail if proceeded with?—*Zahurun-nissa* (Defendant) *v.* *Khuda Yar Khan* (Plaintiff), I. L. R., 3 All. 528.

THE Code of Civil Procedure (Act XIV. of 1882) does not allow of a plaint or memorandum of appeal being returned to the plaintiff, or appellant, after a case has been heard on its merits, and just as the plaintiff or appellant discovers that the Court is about to pronounce an adverse decision. There is no provision in the Code for the return of a plaint to a plaintiff after it has been admitted, and the court-fee stamps thereon cancelled. Even if the Code allowed the High Court to return a plaint after the court-fee stamps have been cancelled, the plaint could not be again legally presented in any Court without new stamps being affixed to it. The Executive Government alone have power to remit court-fees, and no Court or Judge has legal authority to admit a plaint which bears only cancelled stamps, or to direct a subordinate Court to admit such a document.—*Jagjivan Javherdās Seth v. Magdum Ali*, I. L. R., 7 Bom. 487.

WHERE a Court has reason to believe that a suit is lawfully brought by a party who has a right to bring it on behalf of a minor, any withdrawal of the suit by that party would have precisely the same effect as the withdrawal of a suit by a person of full age. But where a person acting for a minor has fraudulently withdrawn the minor's suit under s. 97 of Act VIII. of 1859 (corresponding with s. 373 of Act XIV. of 1882), without obtaining leave to bring a fresh suit, and by such withdrawal an absolute statutory prohibition is imposed on the minor from bringing a fresh suit, it is open to the minor to relieve himself from the consequences of the fraud in one of three ways, *viz.*, (1) by an application to the Court in the suit in which the withdrawal took place; (2) by a regular suit to set aside the judgment founded upon the withdrawal; or (3) by bringing a fresh suit for the same purpose, and setting up the fraud as an answer to the statutory bar.—*Eshan Chundra Safai v. Nundamoni Dassee*, I. L. R., 10 Cal. 357.

WHEN a plaintiff sues to recover possession of property on the allegation that he had purchased it with his own money, and the suit is dismissed in the Court of first instance, the Court of appeal is not justified in giving the plaintiff a decree for a portion of the property, on the ground that the whole was the property of a joint Hindú family in which the plaintiff was a co-sharer. A claim to attached property made under Act VIII. of 1859, s. 246, was dismissed, and the claimant, in the year 1875, instituted a regular suit against the decree-holder under the provisions of that section. The decree-holder then released the property from attachment, and the plaintiff withdrew his suit. The same property was afterwards, in the year 1878, attached again and sold in execution of the same decree. *Held* that a subsequent suit for possession of the property against the purchaser at the execution-sale was not barred under s. 97 of Act VIII. of 1859. *Eshan Chunder Singh v. Shama Churn Bhutto* (11 Moore's I. A. 7) cited.—*Mukhoda Soondury Dasi v. Ram Churn Karmokar*, I. L. R., 8 Cal. 871.

AN ORDER under s. 373 of the Civil Procedure Code permitting the withdrawal of a suit, with liberty to bring a fresh one, not being made appealable by s. 586, or

being a "decree" within the meaning of s. 2, is not appealable. When the plaintiff in a suit applies for permission to withdraw it with liberty to bring a fresh one, such permission should not be granted without the defendant being served with notice to show cause why such permission should not be granted. *L.*, claiming as heir to *H.*, a deceased Hindú, sued *K.*, his widow, and *G.*, a minor represented by his mother and guardian *B.*, to have the adoption by *K.* of *G.* set aside and for certain other reliefs. The matters in difference in the suit were referred to arbitration, and an award was made in favour of the defendant. The plaintiff preferred objections to the award. Before these were disposed of, *K.* died. The Court of first instance subsequently allowed the objections, and set aside the award. The minor defendant then applied to the High Court for revision of the order setting aside the award. This application was rejected on the ground that the order might be impugned on appeal from the decree in the suit. The plaintiff subsequently applied for permission to withdraw the suit, with liberty to bring a fresh one, on the ground that, *K.* having died, he was entitled to possession of the immovable property left by *H.*. This permission was granted. The minor defendant applied to the High Court for revision. *Held* that it might have been a very good ground for allowing the plaintiff to withdraw the suit that *K.*, the adoptive mother of the minor defendant, had died *pendente lite*, had no arbitration-proceedings taken place in the course of the suit; but when the parties had referred their differences to arbitration, and an award had been made in favour of the defendant, and had been set aside, and an application for revision of the order setting it aside had been refused, on the ground that the matter could be made the subject of appeal from the final decree in the suit, permission to withdraw the suit and bring a fresh one should not have been granted. The minor defendant might be seriously prejudiced by such a course, and the suit had not abated against him by the death of *K.*, while on the other hand a decree in the suit, if in his favour, would decide the litigation, and if in favour of the plaintiff, would not prevent his bringing a suit for possession on the separate cause of action which had arisen. *Stahlschmidt v. Walford* (L. R., 4 Q. B. D. 217) referred to. The High Court refused to allow the plaint in the suit to be amended by the addition of a claim for possession of the property left by *H.*.—*Kalián Singh v. Lekhiáj Singh*, I. L. R., 6 All. 211.

M.S.C.C. 374 In any fresh suit instituted on permission granted under the Limitation-law not after last preceding section, the plaintiff shall be bound by first suit. The plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought.

THE rule laid down in s. 374 of the Code of Civil Procedure (Act X. of 1877), that, where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought, applies to applications for execution; and, therefore, in counting the time of three years prescribed by the Limitation Act (XV. of 1877), sch. ii., art. 179, cl. 4, an application allowed to be withdrawn must be discarded as if it had never been presented. The bar created by s. 374 of the Code of Civil Procedure is, in such a case, not removed by s. 14 of the Limitation Act, as causes for which the withdrawal of a suit or application may be permitted are not causes "of a like nature" with defect of jurisdiction.—*Pirjád v. Pirjád*, I. L. R., 6 Bom. 681.

M.S.C.C. 375. If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise, or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise, or satisfaction.

FOR the purpose of setting aside a decree passed in pursuance of a compromise come to out of Court, there are two available modes of procedure—(1) by suite (2) by a review of the judgment sought to be set aside; the latter being the more;

regular mode of procedure. *Lalji Sahu v. Collector of Tirhoot* (6 B. L. R. 649); *Mewah Lal Thakur v. Bhujun Jha* (13 B. L. R., Ap. 11); *Gilbert v. Endean* (L. R. 9 Ch. D. 259), followed.—*Anshootosh Chandra v. Taraprasanna Roy*, I. L. R., 10 Cal. 612.

AFTER the hearing of the suit had begun, the plaintiffs and defendants came to an agreement, by which they settled all the matters in dispute between them in the suit. The agreement was in writing, and dealt in one clause with the dispute, the subject-matter of the suit, and in a second clause with another dispute of long standing between the parties, with which the suit had nothing to do. The plaintiffs subsequently objecting to consent to a decree being taken in terms of the first clause of the agreement, the defendants took out a rule *nisi*, calling on the plaintiffs to show cause why the agreement should not be recorded in Court, and why the Court should not pass a decree in accordance therewith, under the provisions of s. 375 of the Civil Procedure Code (Act XIV. of 1882). The rule was argued on affidavits on either side, the plaintiffs objecting that the above section did not apply to such a case as this, and that, in any case, the matter could not be decided on affidavits, but evidence must be gone into. *Held* that s. 375 gave the Court the power to deal with such a case as this in the manner required, and that this was a proper case in which to exercise such a power; and that in the circumstances of this case, no definite procedure having been enjoined by the Code, the matter might properly be decided on affidavits. Rule made absolute accordingly.—*Ruttonsey Lalji v. Pooribai*, I. L. R., 7 Bom. 304.

CHAPTER XXIII.

OF PAYMENT INTO COURT.

376. The defendant in any suit to recover a debt or damages may, M.S.C.C.

Deposit by defendant of amount in satisfaction of claim. at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

377. Notice in writing of the deposit shall be given through the M.S.C.C.

Notice of deposit. Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

378. No interest shall be allowed to the plaintiff on any sum de- M.S.C.C.

Interest on deposit not allowed to plaintiff after notice. posited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

379. If the plaintiff accept such amount only as satisfaction in part M.S.C.C.

Procedure where plaintiff accepts deposit as satisfaction in part. of his claim, he may prosecute his suit for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

If the plaintiff accept such amount as satisfaction in full of his

Procedure where he accepts it as satisfaction in full. claim, he shall present to the Court a statement to that effect, and such statement shall be filed, and the Court shall pass judgment

accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(a.) A owes B Rs. 100. B sues A for the amount, having made no demand for payment, and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b.) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c.) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150, and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court, and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

CHAPTER XXIV.

OF REQUIRING SECURITY FOR COSTS.

M.S.C.O. 380. If, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiff's does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

THE meaning to be given to the word "residence" in legislative enactments depends upon the intention of the Legislature in framing the particular provision in which the word is used. The residence intended in Act X. of 1877, s. 380, is residence under such circumstances as will afford a reasonable probability that the plaintiff will be forthcoming when the suit is decided.—*Mahomed Shuffi v. Laldin Abdula*, I. L. R., 3 Bom. 227.

M.S.C.O. 381. In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit, unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373.

M.S.C.O. 382. Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

CHAPTER XXV.

OF COMMISSIONS.

A.—Commissions to examine Witnesses.

383. Any Court may, in any suit issue, a commission for the exa- **M.S.C.O.**

Cases in which Court may
issue commission to exa-
mine witness.

mination, on interrogatories or otherwise, of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are, from sickness or infirmity, unable to attend it.

384. Such order may be made by the Court either of its own **M.S.C.O.**

Order for commission.

motion, or on the application, supported by affidavit or otherwise, of any party to the suit, or of the witness to be examined.

385. The commission for the examination of a person who resides **M.S.C.O.**

When witness resides within the local limits of the jurisdiction of within Court's jurisdiction. the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same.

Persons for whose exami-
nation commission may
issue.

386. Any Court may, in any suit, issue a **M.S.C.O.**
commission for the examination of—

(a) any person resident beyond the local limits of its jurisdiction;

(b) persons who are about to leave such limits before the date on which they are required to be examined in Court; and

(c) civil and military officers of Government, who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint.

The Court, on issuing any commission under this section, shall direct whether the commission shall be returned to itself or to any subordinate Court.

SUBSEQUENTLY to the institution of the plaintiffs' suit, one of the defendants died, and his son, as his legal representative, was made a defendant in his stead. The new defendant (*inter alia*) objected that his father had been dead more than six months before the application of the plaintiffs to make him a defendant, and that, therefore, the suit should abate, as provided by the last clause of s. 368 of the Civil Procedure Code, Act X. of 1877 (introduced by the amending Act, XII. of 1879), and art 171B of the Limitation Act, XV. of 1877, which prescribes a period of sixty days within which an application should be made to have the representative of a deceased defendant made a defendant to a suit. When the amending Act, XII. of 1879, was passed—that is, on the 29th of July, 1879—the original defendant had been dead more than six months; but the plaintiff made an application to have the representative of the deceased defendant made a defendant before the publication of the Act in the local Gazette. Held that the provisions of art. 171B of the Limitation Act should not be given retrospective effect, and that the plaintiff's application was not time-barred. The general rule as laid down in *Eeg. v. Dorábji* (11 Bom. H. C. Rep. 117)—that “an Act of limitation, being a law of procedure, governs all proceedings, to which its terms are applicable, from the moment of its enactment, except so far as its operation is expressly excluded or postponed”—

admits of the qualification that, when the retrospective application of a statute of limitation would destroy vested rights, or inflict such hardship or injustice as could not have been within the contemplation of the Legislature, then the statute is not, any more than any other law, to be construed retrospectively.—*Khusálbhái and others (Plaintiffs), Applicants, v. Kábhái and others (Defendants), Opponents*, I. L. R., 6 Bom. 26.

M.S.C.C. **387.** When any Court to which application is made for the issue of a commission to examine a person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission.

M.S.C.C. Court to examine witness pursuant to commission. **388.** Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

M.S.C.C. **389.** After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

M.S.C.C. **390.** Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

When depositions may be read in evidence.

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable, from sickness or infirmity, to attend to be personally examined, or exempted from personal appearance in Court, or

(b) the Court, in its discretion, dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

DOCUMENTS attached to the return of a commission, and identified with the documents referred to in the evidence, may be read at the hearing of the suit in which the commission issued, unless they have been objected to on being tendered in evidence before the Commissioner. Objections to the admissibility of such documents cannot be taken at the hearing of the suit.—*G. M. Strathers (Plaintiff) v. C. E. Wheeler and another (Defendants)*, 6 Cal. Law Rep. 109.

M.S.C.C. Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts. **391.** The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by

(a) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor-General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country for the time being in alliance with Her Majesty.

B.—Commissions for local Investigations.

392. In any suit or proceeding in which the Court deems a local M.S.C.C.

Commission to make local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne-profits or damages or annual nett-profits, and the same cannot be conveniently conducted by the Judge in person, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court :

Provided that, when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

393. The Commissioner, after such local inspection as he deems M.S.C.C.

Procedure of Commissioner. necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, signed with his name, to the Court.

The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in suit, and shall form part of the record ; but the Court, or, with the permission of the Court, any of

Commissioner may be examined in person. the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

C.—Commissions to examine Accounts.

394. In any suit in which an examination or adjustment of ac- M.S.C.C.

Commissioner to examine or adjust accounts. counts is necessary, the Court may issue a commission to such person as it thinks fit, directing him to make such examination or adjustment.

THE Code of Civil Procedure does not authorize the dismissal of a suit on refusal or failure of a party to deposit the amount ordered by the Court as remuneration to a Commissioner appointed under s. 394 to examine accounts. The remuneration of a Commissioner appointed by the Court to examine accounts should, as a rule, be a definite amount, and not at a monthly allowance.—*Ragava Chariár (Plaintiff), Appellant, v. Vedánta Chariár and others (Defendants), Respondents*, I. L. R., 3 Mad. 259.

WHERE a Commissioner was appointed by a Court under s. 180 of Act VIII. of 1859 to take accounts at the request of the plaintiffs, and his costs were not prepaid under s. 182, and the defendant was by the decree ordered to pay the costs of the suit, but the costs of the Commissioner were not entered in the decree, *held* in a suit by the Commissioner against the plaintiffs for remuneration for his labour that the plaintiffs were liable.—*Gopalaratnammyar and others v. Bapula Narasimma Nayudu and others (Representatives of Venkatasami Nayudu, deceased Plaintiff)*, I. L. R., 4 Mad. 399.

IN A suit for an account against an agent, the plaint stated that the defendant had not submitted proper accounts of his agency, and prayed that the defendant might be ordered to produce certain papers, and that, on failure to submit the accounts, he might be decreed to pay the plaintiff Rs. 1,200 by way of damages. The plaint also alleged that, in consequence of the defendant's negligence and mismanagement, the plaintiff believed that he had sustained a loss of Rs. 5,000, and prayed

for a decree for this sum. *Held* that no decree could be made for the sums mentioned, or any other sum, until an account had been taken, and the amount due from the defendant ascertained. *Per* Field, J.—It is the duty of an agent to render proper accounts to his employer irrespective of any contract to that effect. And he does not discharge that duty by merely delivering to his employer a set of written accounts without attending to explain them, and produce the vouchers by which the items of disbursements are supported. Method to be followed on taking accounts in the mufassal stated. If the taking of accounts by the Judge would occasion a waste of public time, he should resort to the provisions of ss. 394 and 395 of the Civil Procedure Code, and furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary. In order to enable an agent to prepare accounts to be furnished to his principal, he should be allowed to have reasonable access, at proper times and in the presence of responsible persons, to such books and papers in the principal's possession as may be necessary for the preparation of the accounts.—*Annoda Persad Roy v. Dwarkanath Gangopadhyay*, I. L. R., 6 Cal. 754.

THE effect of the proviso to s. 3 of the Civil Procedure Code of 1877 taken in connection with the definition of the word "decree" in s. 2 is, that in all suits pending when that Code came into force, the practice and procedure to be followed down to the final result of such suits (*i.e.*, when nothing remains to be done but to execute the decree or to appeal from it), are the same as previously existed, but that in all subsequent proceedings in execution of the decree or in appeal from it, the practice and procedure provided by the Civil Procedure Code of 1877 are to be observed. The word "decree" in s. 3 of the Civil Procedure Code of 1877 means an order final in its nature, and does not include an interlocutory order, such as an order of reference to take accounts, although such order may in general be properly termed a 'decree,' and, therefore, a suit which has been referred by the Court to the Commissioner to take accounts is still in a stage "prior to decree" within the meaning of s. 3 of the Civil Procedure Code of 1877. *Hirji Jina v. Naini Mulji* (12 Bom. H. C. Rep. 129) distinguished. The general nature of a certificate or report—whether general or separate—by the Commissioner for taking accounts, is, that it should, in the case of a general certificate, comprise the result of all the proceedings under the decree or order of reference, or, in the case of a separate certificate or report, that it should comprise the result of some or one of such proceedings, and the Court is not bound to consider a certificate granted by the Commissioner unless he has certified what may be regarded as the result either of the whole inquiry referred to him or some branch or part of it. The power of the Commissioner to grant certificates, and of the Court to deal with motions made with reference thereto, considered. *Quære*—Whether, where a suit has been referred to the Commissioner for the purpose of having accounts taken, such accounts, in the absence of any direction in the decree or order of reference that stated or settled accounts are not to be disturbed, should not be taken without regard to any previous accounts stated or settled between the parties?—*Rustomji Burjorji and others (Plaintiffs) v. Kessowji Naik and others (Defendants)*, I. L. R., 3 Bom. 161.

M.S.C.C. Court to give Commissioner necessary instructions.

and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

Court to receive Commissioner's proceedings or direct further inquiry.

IN A SUIT for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found

liable to render such account for a certain period, the Court should make an interlocutory decree declaring that he is so liable, and direct him to file an account in Court within a fixed period. This decree may be enforced under s. 260 of the Civil Procedure Code. After an account has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by ss. 394 and 395 and form 157 of sch. iv. to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree should be for the payment of this amount, and also, if necessary, for the delivery of any papers, vouchers, or other documents which have come into the hands of the agent in the course of his employment. In a suit for an account against A and B as agents, the plaintiff asked for an account as against A from 1265 (1858) to 1283 (1876), and as against B from 1281 (1874) to 1283 (1876). *Held* that there had been no misjoinder. The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given, is not a period to which the provisions of paragraph 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion to extend the period. Forms of keeping accounts of joint property in the mufassal considered.—*Degamber Motzumdar v. Kallynath Roy*, I. L. R., 7 Cal. 654.

IN A suit for an account against an agent, the plaintiff stated that the defendant had not submitted proper accounts of his agency, and prayed that the defendant might be ordered to produce certain papers, and that, on failure to submit the accounts, he might be decreed to pay the plaintiff Rs. 1,200 by way of damages. The plaintiff also alleged that, in consequence of the defendant's negligence and mismanagement, the plaintiff believed that he had sustained a loss of Rs. 5,000, and prayed for a decree for this sum. *Held* that no decree could be made for the sums mentioned, or any other sum, until an account had been taken, and the amount due from the defendant ascertained. *Per Field, J.*—It is the duty of an agent to render proper accounts to his employer irrespective of any contract to that effect. And he does not discharge that duty by merely delivering to his employer a set of written accounts without attending to explain them, and produce the vouchers by which the items of disbursements are supported. Method to be followed on taking accounts in the mufassal stated. If the taking of accounts by the Judge would occasion a waste of public time, he should resort to the provisions of ss. 394 and 395 of the Civil Procedure Code, and furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary. In order to enable an agent to prepare accounts to be furnished to his principal, he should be allowed to have reasonable access, at proper times and in the presence of responsible persons, to such books and papers in the principal's possession as may be necessary for the preparation of the accounts.—*Annoda Persad Roy v. Dwarkanath Gangopadhyaya*, I. L. R., 6 Cal. 754.

D.—Commission to make Partition.

396. In any suit in which the partition of immoveable property M.S.C.O.

Commission to make partition of non-revenue-paying immoveable property.

not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights.

The Commissioners shall ascertain and inspect the property, and

Procedure of Commissioners.

shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and

distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission, and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith.

WHERE in a suit for partition possession was sought of a definite share of a property consisting of a number of houses, *held* that the principle in such cases is that, if a property can be partitioned without destroying the intrinsic value of the whole property or of the shares, such partition ought to be made; but where partition cannot be made without destroying the intrinsic value of the property, then a money-compensation should be given.—*Ashanullah v. Kali Kinkur Kur*, I. L. R., 10 Cal. 675.

IN A suit for partition, the Subordinate Judge appointed an amín under s. 396 of the Civil Procedure Code to effect a partition. The amín made his report, which was objected to on the merits by the defendant, but ultimately the report was confirmed, the defendant having acquiesced in the proceedings. On appeal to the District Judge, the defendant took an objection, that the appointment of the amín was irregular. *Held* that, having acquiesced in the proceedings so far, it was too late for the defendant to take the objection. *Per* Pontifex, J. (Field, J. doubting).—In a suit for partition, it is competent to the Court, in its preliminary decree, to appoint any one person whom it thinks fit to be a Commissioner to make the partition under s. 396 of the Civil Procedure Code. The section uses the word 'Commissioners,' but it is not necessary for the purposes of partition that there should be more than one Commissioner, and by force of the General Clauses Act, the word 'Commissioners' may be read in the singular number. The intention of s. 396 is, that, upon the first hearing of a suit, the Court shall determine whether the plaintiff is entitled to a partition, and shall ascertain who the several persons entitled in the property are, and shall direct by a preliminary decree or order that Commissioners be appointed to make the partition.—*Gayán Chunder Sen v. Durga Churn Sen*, I. L. R., 7 Cal. 318.

IN A suit for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found liable to render such account for a certain period, the Court should make an interlocutory decree declaring that he is so liable, and direct him to file an account in Court within a fixed period. This decree may be enforced under s. 260 of the Civil Procedure Code. After an account has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by ss. 394 and 395 and form 157 of sch. iv. to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree should be for the payment of this amount, and also, if necessary, for the delivery of any papers, vouchers, or other documents which have come into the hands of the agent in the course of his employment. In a suit for an account against A and B as agents, the plaintiff asked for an account as against A from 1265 (1858) to 1283 (1876), and as against B from 1281 (1874) to 1283 (1876). *Held* that there had been no misjoinder. The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given is not a period to which the provisions of paragraph 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion to extend the period. Forms of keeping accounts of joint property in the mufassal considered.—*Degamber Mozumdar v. Kallynath Roy*, I. L. R., 7 Cal. 654.

E.—General Provisions.

- M.S.C.C. 397.** Before issuing any commission under this chapter, the Court
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| Expenses of commission may order such sum (if any) at it thinks reasonable to be paid into Court. | souable for the expenses of the commission to be, within a time to be fixed by the Court, paid into Court by the party at whose instance or for whose benefit the commission is issued. |
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398. Any Commissioner appointed under this chapter may, unless M.S.C.C. Powers of Commission- otherwise directed by the order of appointment,
ers.

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

399. The provisions of this Code relating to the summoning, attend- M.S.C.C. and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

For the purposes of this section, the Commissioner shall be deemed to be a Court of Civil Judicature.

400. Whenever a commission is issued under this chapter, the M.S.C.C. Court shall direct that the parties to the suit appear before the Commissioner in person or by their agents or pleaders.

Procedure *ex parte*.

If the parties do not so appear, the Commissioner may proceed *ex parte*.

PART III.

OF SUITS IN PARTICULAR CASES.

CHAPTER XXVI.

SUITS BY PAUPERS.

Suits may be brought in *formâ pauperis*.

401. Subject to the following rules, any M.S.C.C. suit may be brought by a pauper.

Explanation.—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit.

A NEXT friend, who is a pauper, can bring a suit, on behalf of a pauper minor.—*Golaupmonee Dossee v. Prosonomoyee Dossee*, 11 B. L. R. 373.

It is competent for the Court to allow a suit not originally instituted in *formâ pauperis* to be continued in *formâ pauperis*.—*Revji Pátíl v. Sakhárám*, 1. L. R., 8 Bom. 615.

THE administrator of the estate of a deceased person may apply to sue *in formâ pauperis* under the provisions of Chapter XXVI. of the Code of Civil Procedure, 1882.—Bill, *In re*, I. L. R., 7 Mad. 390.

WHERE a suit was brought on behalf of a pauper minor by a next friend who was also a pauper, it was held that the failure of such suit was no ground for saddling the costs on the next friend.—Brijessuree Dossia v. Kishore Doss, 25 W. R. 316.

ALTHOUGH Chapter XXVI. of the Civil Procedure Code only provides for suits to be brought by a pauper, the Court has power to allow a defendant to defend *in formâ pauperis*.—Doorga Charan Dass v. Nittokally Dossee and others, I. L. R., 5 Cal. 819.

WHERE the representative of a pauper applies to bring a suit *in formâ pauperis*, there is no necessity for the Court to inquire whether such representative is also a pauper, but the Court, if satisfied that he is the legal representative, should allow him to carry on the suit.—Bhagbut Doss v. Buloram Dass, 3 W. R. 20.

THE rule of English practice which prevents a minor from instituting a suit *in formâ pauperis* through his next friend, unless he gives proof not only that he is himself a pauper, but that the next friend is a pauper, and that he cannot get any substantial person to act as his next friend, is not to be found in, or deduced from, the provisions of the Civil Procedure Code.—Venkatanarasayya by his Father and Guardian Linga-Râyadu, Petitioner, v. Achemma, Counter-Petitioner, I. L. R., 3 Mad. 3.

M.S.C.C. 402. No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language, or assault.
What suits excepted.

M.S.C.C. 403. The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaints.
Application to be in writing.
Contents of application.

AN UNSUCCESSFUL application of a wife to sue for dower *in formâ pauperis*, though opposed by her husband in a counter-petition denying his liability, is not such a demand and refusal of the dower as to constitute a cause of action. The application merely expresses an intention to demand (if allowed to do so) in a particular way.—Ranee Khajooroonissa v. Ranee Ryeesoonissa, L. R., 2 Ind. Ap. 235.

THE Code of Civil Procedure does not authorize the rejection of an application for leave to sue *in formâ pauperis* for want of merits when the applicant is found to be a pauper and his allegations disclose a right to sue. When an application for leave to sue *in formâ pauperis* is made, the Court should not go into evidence as to the merits of the claim.—Koka Ranganayaka Ammal (Petitioner) v. Koka Venkatachellapati Niyudu (Respondent), I. L. R., 4 Mad. 323.

M.S.C.C. 404. Notwithstanding anything contained in section 36, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court under section 640 or section 641, in which case the application may be presented by a duly authorized agent, who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.
Presentation of application.

WHERE the pauper is not exempted from appearing in Court, it is imperative that he should present his application in person.—*Ex parte*, Devgurgura Sumbhagir, I. L. R., 4 Bom. 91.

WHERE the pauper is exempted from appearing in Court under ss. 640 and 641, and the application is presented by a duly authorized agent, it is not necessary that such agent should also be a pauper. *Bhagbut Doss v. Buloram Doss* (3 W. R. 20). But such agent may be a pleader. *Kishore Mohan Bose v. Gour Monee Dossee* (15 W. R. 198). And such pleader must have a special power-of-attorney, not an ordinary vakalatnāma.—*Mussanūt Bhugobbutty Koor v. Ganesi Datt*, 21 W. R. 308.

No JUDGMENT or order passed in a suit to which a minor subject to the provisions of Act XL of 1858 is a party will bind him on his attaining majority, unless he is represented in the suit by some person who has either taken out a certificate, or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of a minor under s. 3 of Act XL of 1858 should be formally placed on the record. Chapter XXXI. of the Civil Procedure Code lays down the form in which a minor should appear as a party, and this form should be strictly followed.—*Mrinamoyi on behalf of Shib Chund Chakrabatti (Objector) v. Jogadishuri Debia (Applicant for Probate)*, 1. L. R., 5 Cal. 450.

405. If the application be not framed or presented in the manner M.S.C.C.

Rejection of application. prescribed by sections 403 and 404, the Court shall reject it.

406. If the application be in proper form and duly presented, the M.S.C.C.

Examination of appli- Judge may, if he thinks fit, examine the peti-
cant. tioner, or his agent, when the applicant is
allowed to appear by agent, regarding the merits of the claim and the
property of the applicant.

When the application is presented by an agent, the Court may, if
If presented by agent, it thinks fit, order that the applicant be exam-
Court may order applicant ined by a commission in the manner in which
to be examined by commis- the examination of an absent witness may be
sion. taken under the provisions of this Code.

UNDER the first clause the Judge himself must examine, and not delegate any other person to do so.—*Reg. v. Mir Sahab Kussamia*, 1. L. R., 1 Bom. 100.

Rejection of application.

407. If it appear to the Court—

M.S.C.C.

(a) that the applicant is not a pauper, or

(b) that he has, within the two months next before the presenta-
tion of the application, disposed of any property fraudulently or with
a view to obtain the benefit of this chapter, or

(c) that his allegations do not show a right to sue in such Court, or

(d) that he has entered into any agreement with reference to the
subject-matter of the proposed suit under which any other person has
obtained an interest in such subject-matter,
the Court shall reject the application.

IT is only the petitioner or his agent who is to be examined under this section, and not his witnesses.—*In the matter of Purkashojha, Petitioner*, 25 W. R. 74.

AN ORDER rejecting an application under the above section is not appealable, nor can it be set aside under the Charter Act.—*In the matter of Shaikh Babur Ali*, 24 W. R. 62 ; *Khojedoonaissa, Petitioner*, 7 W. R. 486.

THE Code of Civil Procedure does not authorize the rejection of an application for leave to sue *in forma pauperis* for want of merits when the applicant is found to be a pauper and his allegations disclose a right to sue. When an application for leave to sue *in forma pauperis* is made, the Court should not go into evidence as to the merits of the claim.—*Koka Ranganayaka Annal (Petitioner) v. Koka Venkatachellapati Nāyudu (Respondent)*, 1. L. R., 4 Mad. 323.

M.S.C.C. 408. If the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

M.S.C.C. 409. On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

THE Judge must himself examine.—In the matter of Eknath bin Madhoba, I. L. R., 1 Bom. 102.

WHERE an application was struck off for want of prosecution, it was held that it might be re-admitted.—In the matter of Rani Umasundari Debi, 5 B. L. R., Ap. 29.

THE examination should extend to all matters referred to in s. 407, and not be limited to the question of pauperism alone.—In the matter of Gunga Adhikaree, Petitioner, 14 W. R. 281 ; 11 B. L. R., Ap. 23.

HOW far a Court has power to review an order refusing a pauper's application to sue is a matter of doubt.—Mahomed Gazeer Chowdry v. Doollub Beebee, 11 W. R. 22 ; but see Khodejoonissa, Petitioner, 7 W. R. 486.

WHERE a party successfully opposed an application to sue as a pauper in a Subordinate Judge's Court on the ground of over-valuation, it was held that he could not afterwards object to the Munsif's jurisdiction.—Brohmo Moyee Dassia v. Anand Chunder Chatterjee, 22 W. R. 120.

WHERE no day was fixed, and the Judge, on default by non-appearance, struck off the application "for the present," it was held that, as there had been no refusal to allow the applicant to sue as a pauper, he might renew his application.—Rajah Bhoj Singh v. Rani Maha Koonwer, 3 Agra, Mis. 1.

AN ORDER made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 638. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—Adarji Edulji v. Manikji Edulji, I. L. R., 4 Bom. 414.

M.S.C.C. 410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V., except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

THE propriety of an order granting leave to sue as a pauper can be contested if the case is appealed. Where a Court gave leave to sue as a pauper (a previous application having been rejected), the suit was dismissed on appeal.—*Baboo Beshesur Singh v. Maharaja Muhessur Baksh Singh*, S. D., N. W., 1864, p. 189.

A SUPERIOR Court has no power, on appeal or motion, to set aside an application granted under the above section. But if it appears, after the granting of the application, that the order has been improperly obtained, the proper course is to apply to the Court which granted the application.—In the matter of *Khodejoonissa*, 7 W. R. 486.

411. If the plaintiff succeed in the suit, the Court shall calculate M.S.C.O.

Costs when pauper succeeds. the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper ; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suits are recoverable under this Code.

A CLAIM for fees would be looked upon as a public claim, and is not subject to the ordinary rules for limitation in execution of decrees under Act XIV. of 1859. *Shami Mohammed v. Munshi Mohammed Ali Khan* (2 B. L. R., Ap. 22) ; *Collector of South Arcot v. Thatha Chetty* (8 Mad. 40). In Bengal, however, it has been ruled that, under the new Limitation Act, the ordinary period for execution applies.—*Collector of Beerbhoom v. Sreehurry Chuckerbutty*, 22 W. R. 512.

GOVERNMENT is not entitled to any exemption from the provisions of the Indian Limitation Act, 1877, relating to applications. *Held*, therefore, that an application by Government under s. 411 of the Code of Civil Procedure to recover the amount of court-fees from a party ordered by the decree to pay the same was subject to the provisions of art. 178 of the Indian Limitation Act, 1877.—*Appaya and another (Appellants) v. Collector of Vizagapatam (Respondent)*, I. L. R., 4 Mad. 155.

N was allowed to bring a suit as a pauper. His suit was dismissed, the decree directing that he should pay the costs of the defendants. On the defendants' application certain immoveable property belonging to N was attached in execution of this decree, and was sold. *Held* that the Crown was entitled to be paid first out of the proceeds of such sale the amount of the court-fees N would have had to pay if he had not been allowed to sue as a pauper. The principle of the ruling in *Ganpat Putaya v. Collector of Canara* (I. L. R., 1 Bom. 7) followed.—*Gulzari Lall and others (Defendants) v. Collector of Bareilly (Plaintiff)*, I. L. R., 1 All. 596.

WHERE Government, after attaching a pauper plaintiff's decree in order to recover the value of stamps, consents to the sale of the decree in execution of another decree against the pauper, and obtains an order by which it secures the chance of any surplus arising from such sale, it cannot afterwards, when the sale is found to yield no surplus, be heard to say, as against the purchaser, that the decree was sold subject to its claim for stamps. The amount of stamps in a pauper case cannot be claimed as a lien or charge upon the decree in favour of Government, but is recoverable in the same manner as costs of suit ; Government being, as regards its claim in such a case, in no higher position than an ordinary judgment-creditor.—*Prankristo Roy v. Collector of Moorshedabad*, 15 W. R. 205.

A PAUPER-SUIT for possession was decreed with mesne-profits to be ascertained in execution, costs being also awarded, including the value of stamps due to Government, which was to be paid by plaintiff and defendant in shares proportionate to their ultimate success when the amount of *wasilat* should be ascertained. As the parties did not choose to go into the inquiry as to the mesne-profits, the Court, on a motion by Government, called upon the parties to appear, and, on their refusing to do so, altered its original order with respect to the payment of the stamp-duty, and declared that it should be realized from both the parties jointly. *Held* that the

Court had no authority to make the second order in favour of Government, and that the proceedings taken in execution thereof were without legal foundation.—*Shostee Churn Roy v. Collector of Chittagong*, 13 W. R. 155.

With a view to recover the amount of court-fees which J would have had to pay had he not been permitted to bring a suit as a pauper, the Government caused certain property belonging to B, the defendant in such suit, who had been ordered by the decree in such suit to pay such amount, to be attached. This property was subsequently attached by the holder of a decree against B, which declared a lien on the property created by a bond. The property was sold in the execution of this decree. *Held* that the Government was entitled to be paid first out of the proceeds of such sale the amount of the court-fees J would have had to pay had he not been allowed to sue as a pauper, the principle that the Government takes precedence of all other creditors not being liable to an exception in the case of lien-holders. The decision in *Ganpat Putaya v. Collector of Canara* (I. L. R., 1 Bom 7) applied in this case.—*Collector of Moradabad (Defendant) v. Muhammad Dain Khan (Plaintiff)*, I. L. R., 2 All. 196.

- M.S.C.C. 412.** If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made, under section 32, co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

- M.S.C.C. 413.** An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to sue as a pauper.

AN ORDER made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—*Adarji Edulji v. Manikji Edulji*, I. L. R., 4 Bom. 414.

WHERE a Court has not refused an application, but has simply returned it in order that the questions of pauperism may be tried by a Court of concurrent jurisdiction (*Skinner v. Orde*, 6 All. 225); or where a Court strikes off, "for the present," the application for non-appearance (*Rajah Bhoj Singh v. Ram Maha Koonwer*, 3 Agra, Mis. 1); or where a Court dismisses the application for want of prosecution (in the matter of *Rani Umasundari*, 5 B. L. R., Ap. 29), the above section does not apply, but the application may be renewed.

- M.S.C.C. 414.** The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—
- (a) if he is guilty of vexatious or improper conduct in the course of the suit;

- (b) if it appears that his means are such that he ought not to continue to sue as pauper, or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

THIS is a new section. In the matter of *Khodejoonissa* (7 W. R. 486) it was held that where it was discovered, after leave was granted to sue *in forma pauperis*, that the applicant should not be permitted to continue to carry on his suit as a pauper, the proper course was to proceed under this section, and not by motion or appeal in the superior Courts.

415. The costs of an application for permission to sue as a pauper M.S.C.C. and of an inquiry into pauperism are costs in the suit.

Costs.

CHAPTER XXVII.

SUIT BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

416. Suits by or against the Government shall be instituted by or M.S.C.C. against (as the case may be) the Secretary of State for India in Council.

Suits by or against Secretary of State in Council.

A SUIT will lie against Government for any breach of contract.—*Ross Johnson v. Secretary of State*, 2 Hyde, 153.

UNDER s. 9, Act I., 1877, no suit will lie against Government for possession of immoveable property without proof of title.

A SUIT will lie against Government for damages for wrongful dismissal of a servant.—*Hughes v. Secretary of State for India in Council*, 7 B. L. R. 688.

NO SUIT will lie against Government for damages sustained by reason of a public ferry being taken up by a Magistrate.—*Collector of Patna v. Romanath Tagore*, 7 W. R. 191.

THE Government is not bound by a contract entered into by an officer in the Public Works Department in excess of his authority.—*Beer Kishore Sahoy v. Government of Bengal*, 17 W. R. 497.

WHERE damages were sustained by reason of negligence in the carriage of goods by the Government Bullock Train, the Secretary of State was held liable.—*Deputy Postmaster of Bareilly v. Earle*, 1 L. R., 3 All. 195.

A SUIT against an agent to the Governor-General, on the part of Government, is substantially a suit against Government, and ought, under s. 9, Act XI. of 1865, to be brought in a Court having jurisdiction at the seat of Government.—*Roopun Tewaree v. W. B. Buckle*, 10 W. R. 142.

WHERE certain Government coolies let fall an iron-funnel while carrying it from the Kidderpur Dockyard to a steamer in the river, and the noise startled a horse, which rushed over it, and injured itself, it was held that the Secretary of State was liable.—*P. and O. Co. v. Secretary of State for India*, Bourke, 167.

THE acts of a Government officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or, if he exceed that authority, when the Government in fact or in law, directly or by implication, ratifies the excess.—*Collector of Masulipatam v. Cavalry Vencata Narainapah*, 2 W. R., P. C., 61.

A SUIT will not lie in the High Court against the Collector of Madras, residing and carrying on business at Sydapet, in respect of matters arising in Chingleput, though his Deputy Collector carried on business within the local limits, and the

orders and proceedings in reference to the matters in question were in his name of office as Collector of Madras.—*Subbaraya Mudali and others v. The Government and Cunliffe*, 1 Mad Rep. 286 ; *Rundle v. Secretary of State in Council*, 1 Hyde, 37 ; *Hearsay v. Secretary of State*, 1 L. R., 6 All. 46.

UNDER s. 521 of the Criminal Procedure Code (Act X. of 1872), a First-class Magistrate in charge of a taluka made an order, declaring certain land to be part of a public thoroughfare, and directing the plaintiff to remove the obstruction caused by him to it. The plaintiff sued the Magistrate to establish his right to the land, alleging that it was his property, and that the Magistrate's order was wrong. The Assistant Judge, who tried the suit, dismissed it, holding that it did not lie against the Magistrate. On appeal to the High Court, it was held that the Assistant Judge might have properly permitted the plaintiff to amend the suit by striking out the name of the First-class Magistrate as defendant, and substituting in that capacity the Secretary of State for India in Council. The High Court, accordingly, reversed the decree of the Assistant Judge, and remanded the suit for retrial on the merits, after making the amendment directed.—*Nilkanthappa Malkapa v. The Magistrate (first class) in charge of the Sholapur Taluka*, 1 L. R., 6 Bom. 670.

ON THE 11th August, 1879, the defendant, as a Magistrate in charge of a taluka, made an order under ss. 523 and 526 of the Criminal Procedure Code (Act X. of 1872), directing the plaintiff to remove a certain *ota*, on the ground that it had been built upon a public thoroughfare. The plaintiff thereupon sued the Magistrate for a declaration that the *ota* and site belonged to him, and prayed for a reversal of the Magistrate's order. The Assistant Judge who tried the suit dismissed it, holding that it did not lie against the defendant. On appeal, the High Court, following the decision in *Nilkanthappa Malkapa v. The Magistrate (first class) in charge of Sholapur Taluka* (1 L. R., 6 Bom. 670), reversed the decree of the Assistant Judge, and remanded the case, in order that the plaintiff might amend his suit by striking out the name of the First-class Magistrate as defendant, and substituting in that capacity the Secretary of State for India in Council, and directing the lower Court to determine the suit upon its merits after the above amendment and due service of process.—*Balaram Chattrukal v. The First-class Magistrate in charge of Taluka Igatpuri*, 1 L. R., 6 Bom. 672.

M.S.C.C. 417. Persons being, *ex officio* or otherwise, authorized to act for Government in respect of any judicial proceeding, shall be deemed to be the recognized agents by whom appearances, acts, and applications under this Code may be made or done on behalf of Government.

M.S.C.C. 418. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient, to insert the words, "The Secretary of State for India in Council."

M.S.C.C. 419. The Government Pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such Court.

M.S.C.C. 420. The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

421. The Court may also, in any case in which the Government M.S.C.O.

Attendance of person
able to answer questions
relating to suit against
Government.

Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

422. Where the defendant is a public officer, the Court may send M.S.C.O.

Service on public officer.

a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

423. If the public officer, on receiving the summons, considers it M.S.C.O.

Extension of time to enable officer to make reference to Government.

proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel;

and the Court, upon such application, may extend the time for so long as appears to be requisite.

424. No suit shall be instituted against the said Secretary of State M.S.C.O.

Notice previous to suing Secretary of State in Council or public officer.

in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, and the name and place of abode of the intending plaintiff; and the plaint must contain a statement that such notice has been so delivered or left.

THE Secretary of State is not a necessary party to a suit to set aside a sale for arrears of revenue, but the Government have such interest as would, on their application, entitle them to be made a party. S. 424 of the Civil Procedure Code does not preclude a Court from adding the Secretary of State as a necessary party under s. 32 of the Code.—*Bal Mokoond Lall v. Jirjudhun Roy*, I. L. R., 9 Cal. 271.

A COLLECTOR, when acting under s. 204 of Act XIX. of 1873 as the agent of the Court of Wards in respect of the estate of a disqualified person, is a public officer within the meaning of ss. 2 and 424 of Act X. of 1877, and consequently, when sued for acts done in that capacity, is entitled to the notice of suit required by the latter section.—*Collector of Bijnor, Manager of the Estate of Chaudhri Ranjit Singh, a Minor (Defendant), v. Munuvar (Plaintiff)*, I. L. R., 3 All. 20.

THE Official Trustee is a 'public officer' within the definition given in s. 2 of the Civil Procedure Code. The cases in which a public officer is entitled to notice of suit under s. 424 of the Code are those in which he is sued for damages for some wrong inadvertently committed by him in the discharge of his official duties, and the object of giving notice is, that if a public body or officer entrusted with powers happens to commit an inadvertence, irregularity, or wrong, before any one has a right to require payment in respect of that wrong, he shall have an opportunity of setting himself right, making amends, restoring what he has taken, or paying for the damages he has done. The Official Trustee, therefore, is not entitled to notice of suit, when the question to be decided relates to the rights of the *cestius que*

trustest in respect of the trust-fund, and not to a wrong committed by him.—
Shahebzadee Shahanshah Begum v. Fergusson, I. L. R., 7 Cal. 499.

- M.S.C.C.** **425.** No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge.
- M.S.C.C.** **426.** If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.
- M.S.C.C.** **427.** If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.
- M.S.C.C.** **428.** In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.
- M.S.C.C.** **429.** When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.
- Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

CHAPTER XXVIII.

SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

- M.S.C.C.** **430.** Alien enemies residing in British India with the permission of the Governor-General in Council, and alien friends, may sue in the Courts of British India as if they were subjects of Her Majesty.
- When aliens may sue.
- No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

When foreign State may sue. **431.** A foreign State may sue in the Courts **M.S.C.C.** of British India, provided that—

(a) it has been recognized by Her Majesty or the Governor-General in Council, and

(b) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor-General in Council.

432. Persons specially appointed by order of Government at the **M.S.C.C.**

Persons specially appointed by Government to prosecute or defend for Princes or Chiefs. request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts, and applications under this Code, may be made or done on behalf of such Prince or Chief.

S. 432 of the Civil Procedure Code does not prevent the institution by an independent prince of a suit in a Court in British India in his own name, and through a recognized agent other than one appointed under that section.—*Beer Chunder Manikya v. Ishan Chunder Burdhum*, I. L. R., 10 Cal 126.

THE Desái of Pátadi, a talukdar of the fifth class in the province of Kathiáwar, in virtue of his being the proprietor of seven villages within the British Political Agency of Káthiáwar, is a ruling chief within the meaning of ss 432 and 433 of the Code of Civil Procedure (XIV. of 1882), and can only be sued with the consent of the Government in a competent Court not subordinate to the District Court.—*Kám bhái v. Himatsangji*, I. L. R., 8 Bom 415.

433. Any such Prince or Chief, and any ambassador or envoy of a **M.S.C.C.**

Suits against Sovereign Princes, &c. foreign State, may, with the consent of Government, certified by the signature of one of its Secretaries (but not without such consent), be sued in any competent Court not subordinate to a District Court. (except first para.).

Such consent shall not be given unless—

(a) the Prince, Chief, ambassador, or envoy, has instituted a suit in such Court against the person desiring to sue him; or

(b) the Prince, Chief, ambassador, or envoy, by himself or another, trades within the local limits of the jurisdiction of such Court; or

(c) the subject-matter of the suit is immoveable property situate within the said local limits and in the possession of the Prince, Chief, ambassador, or envoy.

No such Prince, Chief, ambassador, or envoy, shall be arrested

Sovereign Princes, &c., exempt from arrest.

When their property may be attached.

under this Code; and no decree shall be executed against the property of any such Prince, Chief, ambassador, or envoy, unless with consent of Government certified as aforesaid.

THE Rajah of Hill Tipperah is a Sovereign Prince within the meaning of Chapter XXVIII. of Act X. of 1877, and cannot be sued personally in the Courts of British India except under the conditions specified in s. 433 of that Act. The fact of a defendant not subject to the jurisdiction of a Court having waived his privilege in previous suits brought against him does not give the Court jurisdiction to entertain a suit against him in which he pleads that he is not subject to such jurisdiction. A suit for maintenance which seeks to have the maintenance made a

charge on immoveable property is not a suit for immoveable property within the meaning of clause (c), s. 433, Act X of 1877, nor is it a suit for "benefits to arise out of land" within the meaning of the definition of the words "immoveable property" contained in Act I. of 1868, s. 2, cl. 5. A claim for maintenance is not a charge upon immoveable property. A member of the royal family of Hill Tipperah brought a suit against the Rajah to have it declared that with respect to certain land situate within British India, and forming portion of the possessions of the Rajah, he was entitled to the post of jubah, and to succeed to such land on the death of the Rajah, and also claimed maintenance, and sought to have it declared that such maintenance should be a charge on the revenues of the land situate in British India. *Held* that the British Courts had no jurisdiction to entertain the suit, it not being one for immoveable property.—*Beer Chunder Manikkya v. Raj Coomar Nobodeep Chunder Deb Burmono*, I. L. R., 9 Cal. 535.

M.S.C.C. Execution in British India of decrees of Courts of Native States.

434. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*,

(a) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established by the authority of the Governor-General in Council, may be executed in British India, as if they had been made by the Courts of British India, and

(b) cancel any such declaration.

So long as such declaration remains in force, the said decrees may be executed accordingly.

A suit cannot generally be maintained in any British Court upon the judgment of a Native Court. *Quere*.—Whether it could where there had been a notification by the Governor-General of India under s. 434 of the Civil Procedure Code (Act X. of 1852)?—*Himmatlal v. Shivajirav*, I. L. R., 8 Bom. 593.

No suit is maintainable in any Court in British India founded upon the judgment of a Court situate in a Native State. The Courts of British India cannot enforce the decrees of any Native Courts, except as provided by s. 434 of the Civil Procedure Code (Act X. of 1877). Under that section the decrees of certain Native Courts may be executed in British India, as if they had been made by the Courts of British India. A suit will not lie in the Courts of India upon the judgment of any Court in British India. The only exception to this rule is in the case of judgments of a Court of Small Causes on which suits are permitted to be brought in the High Court in order to obtain execution against immoveable property. A foreign judgment creates an obligation belonging to the class of implied contracts. A Court which entertains a suit on a foreign judgment cannot institute an inquiry into the merits of the original action or the propriety of the decision. *Quere*.—Whether suits on foreign judgments are maintainable in the Civil Courts of India?—*Bhavanishankar Shevakram and another, Plaintiffs, v. Pursadri Kalidas, Defendant*, I. L. R., 6 Bom. 292.

CHAPTER XXIX.

SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

M.S.C.C.

435. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaintiff may be subscribed and verified on behalf of the Corporation or Company by any director, secretary, or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

436. When the suit is against a Corporation or against a Company **M.S.C.C.**

Service on Corporation or authorized to sue and be sued in the name of Company. an officer or of a trustee, the summons may be served—

(a) by leaving it at the registered office (if any) of the Corporation or Company, or

(b) by sending it by post in a letter addressed to such officer or trustee at the office (or, if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(c) by giving it to any director, secretary, or other principal officer of the Corporation or Company :

And the Court may require the personal appearance of any director, secretary, or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

FOR the purposes of summons, a Railway Company must be deemed to dwell at its principal office. An executive engineer of such a Company is not an officer on whom service may be made under cl. c of the above section.—*Hanlon v. India Branch Railway Company*, 1 Hyde, 197.

CHAPTER XXX.

SUITS BY AND AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

437. In all suits concerning property vested in a trustee, executor, **M.S.C.C.**

Representation of beneficiaries in suits concerning property vested in trustees, &c. or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.

THE will of a Pársi testator in Bombay affecting lands in the mofussil, made before the 1st January, 1866, when the Indian Succession Act (X of 1865) came into force, and proved subsequently, *viz.*, on the 25th day of January, 1866, but before Act XXIV. of 1867 came into operation, is governed by Act XXVII. of 1860. *Held* that such probate has the same effect as probate in respect of the property of British subjects, but for the purpose only of collecting debts. It did not confer a title on the executrix to represent the testator's estate, except for the above-mentioned limited purpose, or to exercise the usual powers of an executrix where the testator's intention, to be gathered from the whole of the will, was to vest his property, with the entire management of, and control over it, in a series of persons in succession as trustees, the first of whom was the executrix. *Held* also that, having regard to s. 437 of the Code of Civil Procedure, the persons acting as such trustees in succession under the said will adequately represented all persons beneficially interested in the estate in all suits relating to it.—*Ardesir Jehángir v. Hirabái*, I. L. R., 8 Bom. 474.

438. When there are several executors or administrators, they shall **M.S.C.C.**

Joinder of executors and all be made parties to a suit against one or administrators. more of them :

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

- M.S.C.C. 439.** Unless the Court directs otherwise, the husband of a married woman shall not be a party to a suit by or against her.

CHAPTER XXXI.

SUITS BY AND AGAINST MINORS, AND PERSONS OF UNSOUND MIND.

- M.S.C.C. 440.** Every suit by a minor shall be instituted in his name by an adult person, who, in such suit, shall be called the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff.

A VOLUNTEER guardian has no right to sue on behalf of a minor; the accord or refusal of permission to sue is a matter in the discretion of the Court. Where a suit is brought in violation of s. 440 of the Code of Civil Procedure, or of the provisions of Act XL of 1858, the proper course for a Court to pursue is to return the plaint, in order that the error may be rectified.—*Russick Das Bairagy v. Preonath Misree*, I. L. R., 10 Cal. 102.

THE effect of s. 3 of Act XL of 1858 read with s. 440 of the Code of Civil Procedure is, that a minor plaintiff must not only always sue by his next friend, but when the suit relates to the minor's estate, the person representing the minor must either hold a certificate under the Act, or must obtain the sanction of the Court for the suit to proceed. The mere admission of a plaint by the Court does not sufficiently indicate that sanction is accorded.—*Durga Churn Shaha v. Nilmoney Dass*, I. L. R., 10 Cal. 134.

ACT XX of 1864 is not superseded by Act X of 1877. Where, therefore, a widow claimed to have charge of property in trust for her minor sons, it was held necessary, under s. 2 of Act XX. of 1864, that she should obtain a certificate of administration, if the whole estate was of greater value than Rs. 250, and that it was competent to the Court, if there was any pressing necessity (owing to the operation of the law of limitation) that a suit should be brought at once, to accept the plaint and stay proceedings until the mother had obtained a certificate under Act XX. of 1864. *Vijker v. Jijibhai* (9 Bom. H. C. Rep 310) followed—*Munldhar and Vasudev, minors, by their guardian and mother Radha Bai (Plaintiffs), v. Supdu and Balkrishna (Defendants)*, I. L. R., 3 Bom. 149.

- M.S.C.C. 441.** Every application to the Court on behalf of a minor (other than an application under section 449) shall be made by his next friend, or his guardian for the suit.

- M.S.C.C. 442.** If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of such application shall be given to such person by the defendant; and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

- M.S.C.C. 443.** Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3.

IF no friend or relative of a minor defendant is willing to take out a certificate under Act XL of 1858, and appear as guardian for the infant, the Judge should appoint an officer of Court, or some respectable nominee or nominees of the minor, guardian to defend the suit. *Babajibin Kusaaji v. Maruti* (11 Bom H. C. R. 182) and *Dhoviba Lakshman v. Kusa* (6 Bom. H. C. R. 219) cited and followed.—*Issur Chunder Gupto* (Plaintiff), Appellant, *v. Nobo Kiisto Gupto* and others (Defendants), Respondents, 7 Cal. Law Rep 407.

WHERE no administrator of the estate of a minor is appointed under Act XX. of 1864, there is no objection to the appointment of a guardian *ad litem* under s 443 of the Civil Procedure Code (Act X of 1877) (as amended by Act XII. of 1879) for the purpose of defending a suit against a minor. Act XX of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX. of 1864, nor the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879), empowers any Court to appoint a person, against his or her will, to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. b, of Act XV. of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in *Mohan Ishwar v. Haku Rupa* (I. L. R., 4 Bom. 638) is superseded by Act XV of 1880, s 3, cl. b, in so far as that decision affected officers of the Court appointed guardians *ad litem* under s 456 of Act X. of 1877 as amended by Act XII. of 1879. Inconvenience, pointed out, of introducing into acts relating, and instituted as relating, to special jurisdiction only, provisions affecting civil procedure generally.—*Jadow Mulji* (Plaintiff) *v. Chhagan Ranchand*, deceased, by his son *Jamna*, minor, by his guardian *ad litem* *Wanmali Harjivan* (Defendant), I. L. R., 5 Bom. 306.

444. Every order made in a suit or on any application before the M.S.C.O.

Order obtained without next friend or guardian may be discharged.

Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Costs.

445. Any person being of sound mind and full age may act as next M.S.C.O.

Who may be next friend.

friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant in the suit.

446. If the interest of the next friend of a minor is adverse to M.S.C.O.

Removal of next friend.

that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

- M.S.C.C.** **447.** Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.
- Retirement of next friend.
- The application for the appointment of a new next friend shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.
- M.S.C.C.** **448.** On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.
- Stay of proceedings on death or removal of next friend.
- M.S.C.C.** **449.** If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.
- Application for appointment of new next friend.
- M.S.C.C.** **450.** A minor plaintiff, or a minor not a party to a suit, on whose behalf an application is pending, on coming of age, must elect whether he will proceed with the suit or application.
- Course to be followed by minor plaintiff or applicant on coming of age.
- M.S.C.C.** **451.** If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.
- Where he elects to proceed
- The title of the suit or application shall, in such case, be corrected so as to read thenceforth thus:
- “A. B., late a minor by C. D., his next friend, but now of full age.”
- M.S.C.C.** **452.** If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.
- Where he elects to abandon.
- Costs.
- M.S.C.C.** **453.** Any application under section 451 or section 452 may be made *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.
- Making and proving applications under sections 451, 452.
- M.S.C.C.** **454.** A minor co-plaintiff, on coming of age, and desiring to repudiate the suit, must apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.
- When minor co-plaintiff coming of age desires to repudiate suit.
- Notice of the application shall be served on the next friend, as well as on the defendant; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.
- Costs.

If the late minor be a necessary party to the suit, the Court may direct him to be made a defendant.

455. If any minor, on attaining majority, can prove, to the satisfaction of the Court, that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed. M.S.C.O.

When suit unreasonable or improper.

Notice of the application shall be served on all the parties concerned : and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit.

Costs.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. M.S.C.O.

Petition for appointment of guardian *ad litem*. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian : Provided that he has no interest adverse to that of the minor.

A SUBORDINATE Judge, who, under Act X. of 1877, s. 456, as amended by Act XII. of 1879, s. 73, appoints the nazir or any other officer of his Court to act as guardian of a minor plaintiff or defendant in a suit in his Court, has no jurisdiction to hear it, and pass a decree against that officer as guardian *ad litem* of the minor.—Mohan Ishwar v. Haku Rupa, I. L. R., 4 Bom. 638. See the following ruling.

WHERE no administrator of the estate of a minor is appointed under Act XX. of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879) for the purpose of defending a suit against a minor. Act XX. of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX. of 1864, nor the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879), empowers any Court to appoint a person, against his or her will, to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X. of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. b, of Act XV. of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in Mohan Ishwar v. Haku Rupa (I. L. R., 4 Bom. 638) is superseded by Act XV. of 1880, s. 3, cl. b, in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of Act X. of 1877 as amended by Act XII. of 1879. Inconvenience, pointed out, of introducing into Acts relating, and instituted as relating, to special jurisdiction only, provisions affecting civil procedure generally.—Jadow Mulji (Plaintiff) v. Chhagan Raichand, deceased, by his son Jamna, minor, by his guardian *ad litem* Wanmali Harjivan (Defendant), I. L. R., 5 Bom. 306.

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor ; but neither a plaintiff, nor a married woman, can be so appointed. M.S.C.O.

Who may be guardian *ad litem*.

- M.S.C.C. 458.** If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made out, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.
- Guardian neglecting his duty may be removed.
Costs.

THE Civil Procedure Code does not authorize a Court to decree costs against the guardian of a defendant except in the case referred to in s. 458—Narasimha Ráu (Defendant), Appellant, v. Lákshmiapati Ráu and others (Plaintiffs), Respondents, I. L. R., 3 Mad. 263.

WHERE no administrator of the estate of a minor is appointed under Act XX. of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879) for the purpose of defending a suit against a minor. Act XX. of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX. of 1864, nor the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879), empowers any Court to appoint a person, against his or her will, to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X. of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. b, of Act XV. of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in Mohun Ishwar v. Haku Rupa (I. L. R., 4 Bom. 638) is superseded by Act XV. of 1880, s. 3, cl. b, in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of Act X. of 1877 as amended by Act XII. of 1879. Inconvenience, pointed out, of introducing into Acts relating, and instituted as relating, to special jurisdiction only, provisions affecting civil procedure generally.—Jadow Mulji (Plaintiff) v. Chhagan Raichand, deceased, by his son Jamna, minor, by his guardian *ad litem* Wanmali Harjivan (Defendant), I. L. R., 5 Bom 306.

- M.S.C.C. 459.** If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.
- Appointment in place of guardian dying *pendente lite*.

- M.S.C.C. 460.** When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.
- Guardian *ad litem* of minor representative of deceased judgment-debtor.

- M.S.C.C. 461.** No sum of money or other thing shall be received or taken by a next friend or guardian for the suit on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.
- Before decree, next friend or guardian *ad litem* not to receive money without leave of Court and giving security.

- M.S.C.C. 462.** No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.
- Next friend or guardian *ad litem* not to compromise without leave of Court.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

Compromise without leave voidable.

THE conditions of s. 462 of the Civil Procedure Code, requiring the sanction of the Court to compromises entered into by the guardian *ad litem* of an infant suitor, are not sufficiently complied with by the Court passing a decree in the terms of a compromise presented by the guardian *ad litem*. A decree passed under such circumstances should be set aside.—Rajagopal Takkaya Naiker and two others, minors, by their guardian Subramanya Ayyar (Petitioners), *v.* Muthupalem Chetti and another (Counter-Petitioners), I. L. R., 3 Mad. 103.

463. The provisions contained in section 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV. of 1858, or under any other law for the time in force. **M.S.C.C.**

Application of sections 440 to 462 to persons of unsound mind.

A GUARDIAN *ad litem* cannot be appointed under Chap. XXXI. of the Code of Civil Procedure for a lunatic defendant to whom Act XXXV. of 1858 applies, until the defendant has been adjudged a lunatic under the provisions of the said Act.—Subbaya *v.* Bnthaya, I. L. R., 6 Mad. 380.

464. Nothing in sections 442 to 462 applies to any minor or person of unsound mind, for whose person or property a guardian or manager has been appointed by the Court of Wards, or by the Civil Court under any local law. **M.S.C.C.**

Wards of Court.

CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN.

465. When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead. **M.S.C.C.**

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

The authority shall be in writing, and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this chapter the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, detachment, or dépôt to which the officer or soldier belongs.

466. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier. **M.S.C.C.**

Person so authorized may act personally or appoint pleader.

M.S.C.C. **467.** Processes served upon any person authorized by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

M.S.C.C. **468.** When an officer or a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If, from any cause, the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

M.S.C.C. **469.** If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, military station, or military bázár, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

The commanding officer shall back the warrant or other process with his signature, and, in the case of a warrant of arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.

CHAPTER XXXIII.

INTERPLEADER.

M.S.C.C. **470.** When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself:

Provided that, if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

M.S.C.C. **471.** In every suit of interpleader the

plaint must, in addition to the other statements necessary for complaints, state—

(a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

472. When the thing claimed is capable of being paid into Court M.S.C.C.

Payment of thing claimed or placed in the custody of the Court, the
into Court. plaintiff must so pay or place it before he can
be entitled to any order in the suit.

Procedure at first hearing.

473. At the first hearing the Court may— M.S.C.C.

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit ;

or, if it thinks that justice or convenience so require,

(b) retain all parties until the final disposal of the suit ;

and, if it finds that the admissions of the parties or other evidence enable it,

(c) adjudicate the title to the thing claimed : or else it may

(d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims.

474. Nothing in this chapter shall be taken to enable agents to M.S.C.C.

When agents and tenants sue their principals, or tenants to sue their
may institute interpleader- landlords, for the purpose of compelling them
suits. to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

(a.) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C

(b.) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

475. When the suit is properly instituted, the Court may provide M.S.C.C.

Charge of plaintiff's for the plaintiff's costs by giving him a charge
costs. on the thing claimed or in some other effectual way.

476. If any of the defendants in an interpleader-suit is actually M.S.C.C.

Procedure where defend- suing the stakeholder in respect of the subject
ant is suing stakeholder. of such suit, the Court in which the suit against
the stakeholder is pending shall, on being duly informed by the Court
which passed the decree in the interpleader-suit in favour of the stakeholder that such decree has been passed, stay the proceedings as against him ; and his costs in the suit so stayed may

Costs. be provided for in such suit ; but if, and so far
as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

PART IV.

PROVISIONAL REMEDIES.

CHAPTER XXXIV.

OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

A.—Arrest before Judgment.

M.S.C.O.
(except as
regards im-
moveable
property).

477. If at any stage of any suit, other than a suit for the possession of immoveable property, the plaintiff satisfies the Court by affidavit or otherwise—

When plaintiff may apply that security be taken. —
that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

Ditto. Order to bring up defendant to show cause why he should not give security.

478. If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

that the defendant, with any such intent as aforesaid,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance.

Ditto.

479. If the defendant fail to show such cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure in case of application by surety to be discharged.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation. (except as regards immoveable property).

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

481. If the defendant fail to comply with any order under section Ditto.

Procedure where defendant fails to give security or find fresh security. 479 or section 480, the Court may commit him to jail until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree: Provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided that no person shall be detained in prison under this section after he has complied with such order.

THE defendant was arrested before judgment, and, on the 5th February, 1883, committed to jail under s. 481 of the Civil Procedure Code. On the 6th March following, a decree in the suit was passed against him. On the 28th July, the defendant being then still in jail under the order of the 5th February, the plaintiff took out a fresh warrant of arrest in execution of the decree, and sought to have the defendant further imprisoned for the full period of six months limited by s. 342 of the Code. Held that the defendant could be re-committed to jail, in execution of the decree, only for such a period as, together with the period of imprisonment that had elapsed since the passing of the decree, would complete a period of six months, and that, consequently, he would be entitled to be liberated on the 5th September, 1883. Imprisonment under s. 481 becomes, after decree, imprisonment in execution of the decree, and the imprisonment suffered after that date must consequently be taken into consideration in calculating the period of six months, which, by s. 342 of the Code, is the limit allowed for an imprisonment in execution of a decree.—Ghanashamdás Goorsámull v. Johárimull Kedárináth, I. L. R., 7 Bom. 431.

482. The provisions of section 339 as to allowances payable for Ditto.

Subsistence of defendants arrested. the subsistence of judgment-debtors shall apply to all defendants arrested under this chapter.

B.—Attachment before Judgment.

Application before judgment for security from defendant to satisfy decree, and, in default, for attachment of property.

483. If at any stage of any suit, the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

(a) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(b) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit, and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

The application shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

Contents of application. A CREDITOR attached before judgment certain of his debtor's property. Between the date of attachment and the date of the decree subsequently obtained by the creditor, the property of the debtor became vested in the Official Assignee under a vesting order. The Official Assignee brought a suit to remove the attachment, and for an injunction restraining the sale of the property. The Court of first instance decreed the suit in favour of the Official Assignee. On the case coming up before a Full Bench, *held* (*Per* McDonell, Tottenham, and Pinsep, JJ.) that, where there has been an attachment prior to decree, and the property of a judgment-debtor subsequently becomes vested in the Official Assignee in insolvency previous to the decree, the vesting order will prevent such an attaching creditor from executing his decree against the property. *Per* Garth, C.J., and Mitter, J., *contra*, that, under the 34th chapter of Act XIV. of 1882, the Court had no power to remove the attachment before judgment, or stay the sale at the instance of the Official Assignee.—*Shib Kristo Shaha Chowdhry v. A B Miller*, I. L. R., 10 Cal 150.

M.S.C.C.
(except as
regards im-
moveable
property).

484. If the Court, after examining the applicant, and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that he has, with such intent, quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also, in the order, direct the conditional attachment of the whole or any portion of the property specified in the application.

THE defendants were, on the 10th of March, 1881, called upon, under s. 484 of the Civil Procedure Code (Act X. of 1877), to furnish security for the satisfaction of a decree that the plaintiff might obtain against them, or to show cause, on the 28th March, 1881, why security should not be furnished. To this direction the order was appended, which is provided by the form at the end of the Code of Civil Procedure, for a provisional attachment under s. 484. The defendants, to avoid the attachment, gave security, on the 12th March, 1881, for satisfaction of the decree, and the attachment was not carried out. On the 28th March, 1881, they showed cause why security should not be furnished; but the Subordinate Judge, as security had been furnished, thought the matter was at an end, and that he could not cancel the security-bond. *Held* that the Subordinate Judge was wrong; the security so given was really not the security expressly provided under s. 484, and did not preclude the defendants from showing cause why no security should be furnished.—*Lotlikar (Applicant) v. Lotlikar (Respondent)*, I. L. R., 5 Bom. 643.

Ditto.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required, within the time fixed by the Court, the Court may order that the property specified in the attachment, if cause not shown or security not furnished, be sold.

application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

486. The attachment shall be made in the manner herein provided for the attachment of property in execution of a decree for money. M.S.C.C.
(except as regards immoveable property).
Ditto.

487. If any claim be preferred to the property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

488. When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed. Ditto.

489. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree. Ditto.

490. Where property is under attachment by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree. Ditto.

C.—Compensation for improper Arrests or Attachment.

491. If, in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds, Ditto.

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit, the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment:

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

CHAPTER XXXV.

OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

A.—Temporary Injunctions.

Cases in which temporary injunction may be granted

492 If, in any suit, it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors

the Court may, by order, grant a temporary injunction to restrain such act, or give such other order, for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit, or refuse such injunction or other order.

493. In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right

The Court may, by order, grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same

In case of disobedience, an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance (if any) to the defendant.

494 The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party

495 An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

496. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Order for injunction may be discharged, varied, or set aside

497 If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed, or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit, the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant, for the expense or injury caused to him by the issue of the injunction :

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

B—Interlocutory Orders.

498 The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner, and on such terms as it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay.

Power to order interim sale of perishable articles

499 The Court may, on the application of any party to a suit, and on such terms as it thinks fit,

(a) make an order for the detention, preservation, or inspection of any property being the subject of such suit ;

(b) for all or any of the purposes aforesaid, authorize any person to enter upon or into any land or building in the possession of any other party to such suit, and

(c) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

AN APPLICATION for an order under s 499 of the Code of Civil Procedure can only be made by a plaintiff after summons has been served and after reasonable notice of the intention to apply for the order has been given in writing to the defendant.—*Sengotha v Ramasami*, I L R, 7 Mad. 241

500. An application by the plaintiff for an order under section 498

Applications for such orders to be after notice.

or section 499 may be made after notice in writing to the defendant at any time after service of the summons.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

501. When land paying revenue to Government, or a tenure liable

When party may be put in immediate possession of land the subject of suit.

to sale, is the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government-revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

502. When the subject-matter of a suit is money or some other

Deposit of money, &c., in Court.

thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

CHAPTER XXXVI.

APPOINTMENT OF RECEIVERS.

M.S.C.C.

503. Whenever it appears to the Court to be necessary for the

Power of Court to appoint Receivers.

realization, preservation, or better custody or management of any property, moveable or immoveable, the subject of a suit, or under attachment, the Court may, by order—

(a) appoint a Receiver of such property, and, if need be,

(b) remove the person in whose possession or custody the property may be from the possession or custody thereof;

(c) commit the same to the custody or management of such Receiver; and

(d) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation, and improvement of the property, the collection

of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Receiver's liabilities.

Every Receiver so appointed shall—

(e) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property;

(f) pass his accounts at such periods and in such form as the Court directs;

(g) pay the balance due from him thereon as the Court directs; and

(h) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.

AN ORDER refusing to appoint a receiver under s. 503 of the Code of Civil Procedure is not appealable.—*Subramanya v. Appasámi*, I. L. R., 6 Mad. 355.

A SERVANT of a firm, the business of which is being managed by a receiver appointed under s. 503 of the Code of Civil Procedure, 1877, has no preferential claim over the attaching creditor on the assets of the firm for wages due before the appointment of the receiver.—*Short v. Pickering*, I. L. R., 6 Mad. 138.

A MANAGER appointed under s. 243 of Act VIII. of 1859 is appointed merely to collect rent and other receipts and profits of the land, to carry on the existing state of affairs as the proprietor himself had been doing, and he has no power to issue notice of enhancement.—*Khetter Mohun Dutt v. Wells*, I. L. R., 8 Cal. 719.

By a decree in an administration-suit, A was appointed receiver "to manage the estate." A died, and by a subsequent order B was appointed receiver. One of the defendants in the suit applied to have B removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibái (Plaintiff) v. Limji Nowroji Banáji and others (Defendants)*; *Harrivallubhdás Calliandas (Original Defendant), Appellant, v. Ardasar Frámji Moos (Receiver and Respondent)*, I. L. R., 5 Bom. 45.

NO APPEAL lies from an order passed under s. 505 of the Civil Procedure Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion, and not an order under s. 503. Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or pass such other order as it thinks fit" in s. 505 being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver.—*Birajan Koorer v. Ram Churn Lal Mahata*, I. L. R., 7 Cal. 719.

THE powers conferred by s. 503 of the Civil Procedure Code are not to be exercised as a matter of course, and it is not a reason for allowing an application for the appointment of a receiver, that it can do no harm to appoint one. The discretion given by that section is one that should be used with the greatest care and caution. Because a plaintiff in his plaint makes violent and wholesale charges of waste and malversation against a defendant in possession of property as executor under a will or as the tenant for life, and upon this basis applies for a receiver to be appointed, it is not a necessary consequence that such appointment should be made. *Held* in this case, where the sons of a Hindú widow, in possession of her

husband's estate, under a will, sued their mother, as reversioners under the will, for possession of the estate, on the ground of mismanagement and waste, and on the same grounds applied for the appointment of a receiver under s. 503 of the Civil Procedure Code, that a receiver had been appointed on insufficient grounds.—*Srimati Prosonomoyi Debi v. Beni Madhab Rai*, I. L. R., 5 All. 556.

M.S.C.C. **504.** Where the property is land paying revenue to Government, When Collector may be or land of which the revenue has been assigned appointed Receiver. or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be Receiver of such property.

NO APPEAL lies from an order passed under s. 505 of the Civil Procedure Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion, and not an order under s. 503. Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or pass such other order as it thinks fit" in s. 505 being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver.—*Birajan Koor v. Ram Churn Lall Mahata*, I. L. R., 7 Cal. 719.

M.S.C.C. **505.** The powers conferred by this chapter shall be exercised only Courts empowered under by High Courts and District Courts: Provided this chapter. that, whenever the Judge of a Court subordinate to a District Court considers it expedient that a Receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit.

NO APPEAL lies from an order passed under s. 505 of the Civil Procedure Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion, and not an order under s. 503. Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or pass such other order as it thinks fit" in s. 505 being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver.—*Birajan Koor v. Ram Churn Lall Mahata*, I. L. R., 7 Cal. 719.

PART V. OF SPECIAL PROCEEDINGS.

CHAPTER XXXVII.

REFERENCE TO ARBITRATION.

M.S.C.C. **506.** If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is

Parties to suit may apply for order of reference.

pronounced, apply in person, or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing, and shall state the particular matter sought to be referred.

UNDER this section all parties materially interested must concur in the reference to arbitration.—10 W. R. 171.

A PLAINTIFF must show special authority to assent to an arbitration on behalf of another plaintiff.—1 W. R. 80.

IT is very doubtful whether a Judge has power, under Act X. of 1859, to refer a case to arbitration.—16 W. R. 160.

A REFERENCE to arbitration made under an order of Court cannot be revoked at the instance of a party.—17 W. R. 516.

THE Court cannot legally allow a case, as regards an absent plaintiff, to be decided by reference to arbitration.—1 W. R. 80.

AN APPELLATE Court is competent to refer cases to arbitration.—17 W. R. 31. But see 19 W. R. 321. Also 21 W. R. 120.

AN Appellate Court has no power to refer a case to arbitration, even on consent of the parties.—(F. B.) 21 W. R. 210. But see 17 W. R. 31, *infra*.

APPLICATION for reference to arbitration must be made to the Court in writing by parties in person or by pleaders specially authorized.—W. R. Sp. 41.

NO PRESUMPTION can be raised against a party to a suit from his refusal to withdraw from the determination and submit to arbitration.—20 W. R. 172

NOR can the first Court, by consent of parties, refer so much of the matter in dispute which it has already determined, and which is pending in appeal.—22 W. R. 207.

AN Appellate Court, in remanding a case, cannot direct the first Court to call upon the parties to agree to arbitration, or, on their failing to do so, to appoint arbitrators.—22 W. R. 396.

REFERENCE to arbitration cannot be made except on the recorded and expressed consent of both parties.—2 Hay 583 (Marshall 517). The consent of the pleaders is not sufficient.—16 W. R. 160.

BOTH the Code of Procedure and the Panjáb Code require the consent of the parties to a reference to, and the appointment of, arbitrators.—(P. C.) 5 W. R., P. C. 21 (P. C. R. 616). See also 14 W. R. 211.

WHEN a case which has been referred in the Principal Sudder Ameen's Court to arbitration is withdrawn by the Judge for trial in his own Court, the Judge is not bound to refer it to arbitration.—6 W. R. 290.

A PARTY, by appearing before arbitrators appointed without his consent, and in spite of his repeated remonstrances, does not forfeit his right to question the validity of the award.—(P. C.) 5 W. R., P. C. 21 (P. C. 616). See also 14 W. R. 211.

A REGULAR (and not a summary) appeal lies to set aside an award of arbitration passed under s. 313 of Act VIII. of 1859 (corresponding with s. 506, Act X. of 1877).—W. R. Sp. Mis. 33. And should be on the full stamp.—12 W. R. 50. See 15 W. R., F. B., 9.

WHERE all the parties did not agree to an arbitration, the award is legal against those who did.—6 W. R. 25. See also 14 W. R. 211. And cannot be converted into a final decree under Act VIII. of 1859, though it is evidence against any party who agreed to the reference.—15 W. R. 427.

WHERE the parties agreed to refer a suit to arbitration, but no provision was made that a decision by the majority of arbitrators should be binding, and two of five arbitrators withdrew, *held* that a decision by the majority was invalid.—Gurupáthappa v. Narasingappa, I. L. R., 7 Mad. 174.

WHERE an Appellate Court directed the first Court to call upon the parties to agree to arbitration, and the parties waived the irregularity, and consented to the matter being tried by arbitrators, *held* that they could not afterwards, on special appeal, object to the proceedings—22 W. R. 396.

THE Court has no power under the provisions of the Code of Civil Procedure to sanction an order passed by the arbitrators to whom a matter has been referred, making the payment of their fees a condition precedent to their hearing the reference.—H. Roberts (Plaintiff) v. O. Steel and others (Defendants), 8 Cal. Law Rep. 439.

A MERE agreement to refer to arbitration, if it contain no acknowledgment of the plaintiff's right or possession, does not save limitation; but the time during which the case was before the arbitrators, and the plaintiff was trying in another form to enforce the award, may be deducted from the period of limitation.—W. R. Sp. 283 (L. R. 65).

UNDER ss. 523 and 525 of the Civil Procedure Code (Act X. of 1877) parties to a suit as well as persons not engaged in litigation may agree to refer matters in dispute between them to private arbitration without the intervention of the Court, and may apply to have the agreement filed; and the mere fact that a suit is pending with respect to the matters in dispute is not of itself a sufficient reason to induce the Court to refuse to file the agreement—Haimalabdas Kaliandas (Plaintiff) v. Utam Chand, Manek Chand, and others (Defendants), I. L. R., 4 Bom. 1.

WHERE, after a reference of certain suits to arbitration, the parties withdrew the first submission, and agreed to submit the same suits with other matters to arbitration, and before the arbitrators so appointed had arrived at a final conclusion, the parties by *solehnamah* compromised the whole of the subjects of dispute, and an award was drawn up according to this compromise, a decree corresponding with the award was at first made only in those suits which had been originally referred, and afterwards on the application of some of the parties, the effect of a decree was given to the remainder of the award, *held* that this application to give effect to the unenforced portion of the award ought to have been dismissed, but that as the parties concerned did not take steps to set the lower Court right in this matter (*inter alia*), the High Court could not interfere, and that the effect of the lower Court's decision was to dispose of the award altogether, and not to divide it into two parts, of which one might form the foundation of a future judgment.—22 W. R. 129.

NOTWITHSTANDING that Chap XXXVII. of Act X. of 1877 (in reference to arbitration) does not refer specially to suits brought under Act X. of 1859. yet if both parties to a suit for a *kabuliyat* brought under the latter Act agree to refer the matters in dispute between them to certain arbitrators named by them, and file a joint petition in the Court of the Deputy Collector, stating that they had so agreed, and praying that the case may be referred to such arbitrators, neither of them will be afterwards at liberty to object to a decree made, embodying the award of the arbitrators, on the ground that the reference to arbitration was irregular, and not warranted by any of the provisions of Act X. of 1877. When a case has been so referred, the arbitrators are at liberty to determine what appears to them to be a fair and equitable rate of rent, and notwithstanding the amount so found is less than that demanded by the plaintiff in his plaint, the Court out of which the reference issued is not at liberty on that ground to dismiss the suit, but is bound to order the defendant (with the alternative of eviction) to execute a *kabuliyat* in favour of the plaintiff at the rate determined by the arbitrators to be fair and equitable.—Khemna Gowala v. Budoloo Khan, I. L. R., 6 Cal. 251.

M.S.C.C. Nomination of arbitrator.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

If the parties cannot agree with respect to such nomination or if
 When Court to nominate arbitrator. the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

WHERE both parties could not agree in nominating an arbitrator, and the Judge nominated one under the section, it must be inferred that he did so at their desire.—7 W. R. 13.

BEFORE a Judge refers a case to arbitration, he should ascertain whether the parties nominated are willing to act: and till he has done so, any nomination of an arbitrator by him, without the approbation or consent of the parties, is illegal. But when a case has been referred to arbitration, after the preliminary steps have been properly taken, the Judge has the sole power of appointing fresh arbitrators in the room of such as refuse to act.—W. R. Sp. 338 (L. R. 113).

S 522 of the Code of Civil Procedure, 1877, which provides that no appeal shall lie from a decree upon an award, except in so far as the decree is in excess of, or not in accordance with, the award, assumes that the award has been regularly and properly passed by arbitrators duly appointed. Where two of five arbitrators nominated by the parties to a suit, and appointed by the Court, had not consented before, and, after appointment, declined to act, and the Court appointed two arbitrators in their place against the consent of one of the parties to the suit, *held* that, under the circumstances, the appointment of the new arbitrators was not warranted by the provisions of s. 510 of the Code of Civil Procedure, and the order of reference to such arbitrators, the award made by them, and the decree passed upon the award, were illegal. *Held* also that the High Court could set aside the decree under the powers given by s. 622 of the Code of Civil Procedure.—*Pugardin v. Moidin*, I. L. R., 6 Mad. 414.

508. The Court shall, by order, refer to the arbitrator the matter **M.S.C.C.**

Order of reference. in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

WHERE a reference to arbitration fixes no time for the arbitrators to make the award, the award itself falls to the ground.—10 W. R. 206.

WHERE the reference fixes no time for the award to be made, either party may hasten the proceedings by giving notice to the arbitrators that the award must be made, and an umpire appointed, within a reasonable time; but when the time elapsing after the notice has been actively employed by the arbitrators, and the delay has been owing to necessity which they could not control, the parties cannot recede from their submission by reason of the notice.—(P. C.) 10 W. R. 51.

When reference is to two or more, order to provide for difference of opinion. **509.** If the reference be to two or more **M.S.C.C.** arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,

- (a) by the appointment of an umpire, or
- (b) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or
- (c) by empowering the arbitrators to appoint an umpire, or
- (d) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

PARTIAL disagreement of two arbitrators does not nullify their award as a whole.—2 W. R. 32.

WHERE parties do not agree to be bound by the act of the majority, the award must be unanimous.—7 W. R. 269, 19 W. R. 47, 22 W. R. 129.

WHAT a party must do who contests the validity of an award on the ground that it was not completed within the time fixed by the Court.—17 W. R. 31. But see 19 W. R. 321.

WHEN a case is referred to the award of three arbitrators, an award signed by two is null and void, and ought not to be read as evidence in the case.—Sév. 479. See also 14 W. R. 211, 22 W. R. 129.

AN ORDER of reference to arbitration should, as required by this section, provide for difference of opinion among the arbitrators and for decision by a majority.—4 W. R. 4. See also 10 W. R. 398, 22 W. R. 129.

THE mere absence of a clause in the order of reference to arbitration, providing for a difference of opinion between the arbitrators, cannot vitiate the award where there is no such difference of opinion.—17 W. R. 30.

A CASE cannot, in special appeal, be sent back to the arbitrators with a provision for difference of opinion, where the arbitrators having given in different awards, the case was tried anew by the first Court, whose decision has been affirmed by the lower Appellate Court.—14 W. R. 150.

M.S.C.C. 510. If the arbitrator, or, where there are more arbitrators than

Death, incapacity, &c., of one, any of the arbitrators, or the umpire, dies, arbitrators or umpire. or refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may, in its discretion, either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit.

WHERE an arbitration failed, and the record came back to the Court, the Court was held to have no power to dismiss the suit without giving notice to the parties or fixing a date for the hearing of the suit.—22 W. R. 21.

AN ARBITRATOR has full powers to retract his resignation of office before it is accepted.—15 W. R. 37. *Held* by the Privy Council that an arbitrator who first tendered and then withdrew his resignation did not formally divest himself of his character of arbitrator, and was thereof not *functus officio* when he signed the award —(P. C.) 23 W. R. 429.

S. 522 of the Code of Civil Procedure, 1877, which provides that no appeal shall lie from a decree upon an award, except in so far as the decree is in excess of, or not in accordance with, the award, assumes that the award has been regularly and properly passed by arbitrators duly appointed. Where two of five arbitrators nominated by the parties to a suit, and appointed by the Court, had not consented before, and, after appointment, declined to act, and the Court appointed two arbitrators in their place against the consent of one of the parties to the suit, *held* that, under the circumstances, the appointment of the new arbitrators was not varied by the provisions of s. 510 of the Code of Civil Procedure, and the order of reference to such arbitrators, the award made by them, and the decree passed upon the award, were illegal. *Held* also that the High Court could set aside the decree under the powers given by s. 622 of the Code of Civil Procedure.—*Pugardin v. Moidin*, L. L. R., 6 Mad. 414.

M.S.C.C. 511. Where the arbitrators are empowered by the order of refer-

Appointment of umpire. ence to appoint an umpire, and fail to do so, by Court. any of the parties may serve the arbitrators with a written notice to appoint an umpire, and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

THE appointment of an umpire under this section is required, where there are two or more arbitrators, to provide for any difference of opinion amongst them ; but not where, with the consent of the Court, only one arbitrator has been appointed.—25 W. R. 11.

512. Every arbitrator or umpire appointed under section 509, M.S.C.C.

Powers of arbitrator or umpire appointed under sections 509, 510, 511. section 510, or section 511, shall have the like powers as if his name had been inserted in the order of reference.

513. The Court shall issue the same processes to the parties and M.S.C.C.

Summoning witnesses. witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Persons not attending in accordance with such process, or making Punishment for default, any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court, on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

514. If, from the want of the necessary evidence or information, M.S.C.C.

Extension of time for making award. or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award,

Supersession of arbitration. or make an order superseding the arbitration, and in such case shall proceed with the suit.

UNDER this section the time for delivery of an award may be extended at the discretion of the Court without the consent of the parties.—2 W. R. 297.

APPLICATIONS for the extension of the period for the submission of an award and orders thereon should be made in writing and recorded. When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of first instance.—*Monji Premji Set (Plaintiff), Appellant, v. Maliyakel Koyassan Koya Haji (Defendant), Respondent, I. L. R., 3 Mad. 59.*

515. When an umpire has been appointed, M.S.C.C.

When umpire may arbitrate in lieu of arbitrators. he may enter on the reference in the place of the arbitrators,

(a) if they have allowed the appointed time to expire without making an award, or

(b) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

AS IN the case of an arbitrator so in the case of an umpire a Court has power to extend the period within which the award is to be submitted. Where the parties prayed the Court to appoint two arbitrators and an umpire and to refer the case to them for decision, and undertook to abide by such decision as might be passed by them unanimously or by the majority of them, *held* that an award by the umpire alone, the arbitrators being unable to decide, was valid. *Held* also that the plaintiff, having appeared before the umpire, and taken no objection to the procedure of the umpire from March to August, was estopped from raising the objection, that an award of the umpire alone was invalid. The Court can extend the time allowed to an umpire under s. 509 of the Code.—*Kupur Rán (Second Defendant), Petitioner, v. Venkatarámáyár (Plaintiff), Respondent, I. L. R., 4 Mad. 311.*

M.S.C.C. 516. When an award in a suit has been made, the persons who made it shall sign it, and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

AN arbitration-award must be one single instrument complete in itself.—12 W. R. 397.

CIVIL Court's judgment cannot affect the rights of parties as declared in an award.—2 W. R. 297.

AN arbitration-award is not binding on an intervenor as a decree in a suit disposed of by a regular suit.—17 W. R. 233.

A Civil Court acts illegally in deciding a case on its merits after an arbitration-award.—5 W. R. 130. See also 10 W. R. 398.

AN APPEAL lies when an arbitration-award is questioned on the ground of there having been no valid submission to arbitration.—19 W. R. 47.

AN arbitration-award is not legal if not signed by the arbitrators sitting together at one place and at the same time.—11 W. R. 433; 12 W. R. 397.

A MUNSIF has no jurisdiction to entertain an application and pass an order on the enforcement of an arbitration-award relating to the determination of rent.—15 W. R. 556.

IN A suit pending before arbitrators, an appellant who is made a co-plaintiff on application, and makes no objection to the arbitration, is bound by the award.—5 W. R. 130.

AN arbitration-award cannot change the nature of the claim, and convert into a simple debt cognizable by a Civil Court a claim for moneys collected by defendant as *tehsildar*.—5 W. R. 13.

A COURT cannot reserve permission to a plaintiff to bring a fresh suit for the matter of an arbitration-award, except under s 97, Act VIII., 1859 (corresponding with ss. 373, 514, Act XIV., 1882).—2 W. R. 297.

ARBITRATORS should give separate awards in a case referred to them by the Judge, and on other matters referred to them by the parties, instead of bringing them all up and giving a general award.—3 W. R., Mis., 27.

AN ARBITRATOR should not allow documents entrusted to him by the Court to be removed from the *nuthee*, but the award should, under this section, be accompanied by all the proceedings, depositions, and exhibits in the suit.—12 W. R. 397.

WHERE an arbitrator imported into his proceedings a previous inquiry alleged to have been made by him, and relied upon admissions made in the former proceedings, his award was held to be bad, and the decision based thereon set aside.—24 W. R. 81.

THE act of an arbitrator, in handing in an award to the proper officer of the Court, for the purpose of the award being filed, cannot be considered as an 'application' within the meaning of the Limitation Act.—*Roberts v. Harrison*, 1 L. R., 7 Cal. 333.

A COURT may look into the whole of an arbitration-record, and set aside the award on reasonable presumption of misconduct (*i.e.*, because it was in opposition to the testimony of witnesses whom the arbitrators accepted and believed).—12 W. R. 93. See 22 W. R. 447.

BOTH parties having agreed to the appointment of arbitrators to determine their rights in dispute according to the terms of a will, and it being contended by the appellant that it was miscarriage on the part of the arbitrators to make their award, without having had the whole of the will before them, their lordships came to the conclusion that, as the appellant, having a clear knowledge of the circumstances on which he might found an objection to the arbitrators proceeding to make their award, did submit to the arbitration going on, and allowed the arbitrators to deal with the case as it stood before them, taking his chance of the decision being more or less

favourable to himself, it was too late for him, after the award had been made, and on the application to file the award, to insist on this objection to the filing of the award.—(P. C.) 26 W. R. 10.

517. Upon any reference by an order of the Court, the arbitrators **M.S.C.C.**

Arbitrators or umpire or umpire may, with the consent of the Court, may state special case. state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to, and form part of, the award.

Court may, on application, modify or correct award in certain cases.

518. The Court may, by order, modify or **M.S.C.C.** correct an award,

(a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part, and does not affect the decision on the matter referred, or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

519. The Court may also make such order as it thinks fit respect- **M.S.C.C.**

Order as to costs of arbitration. ing the costs of the arbitration, if any question arise respecting such costs, and the award contain no sufficient provision concerning them.

520. The Court may remit the award or any matter referred to **M.S.C.C.**

When award or matter referred to arbitration may be remitted. arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit,

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;

(b) where the award is so indefinite as to be incapable of execution;

(c) where an objection to the legality of the award is apparent upon the face of it,

THIS section does not authorize a Court to remit a case to the arbitrators except as to matters in difference between the parties.—14 W. R. 469.

A COURT was held to have done right in refusing to permit the filing of an arbitration-award which was not complete in itself, and which, as a whole, the parties had not agreed to.—21 W. R. 182.

AN AWARD of arbitrators on a matter not in difference between the parties, nor referred to them, is null and void for want of jurisdiction, notwithstanding that it has been confirmed by a judgment of Court passed in accordance therewith.—15 W. R. 172.

S. 323, Act VIII., 1859 (corresponding with s. 520, Act XIV., 1882), authorizes a Court to remand a case to arbitrators for reconsideration when there are mistakes which it cannot amend; and if the arbitrators refuse to reconsider, their award becomes null and void without proof of corruption or misconduct.—7 W. R. 106.

WHERE matters in dispute are referred to arbitration, and it is found that one question at issue is omitted from the reference, and that the award contains no decision thereon, the party interested should bring the omission to the notice of the Court; if he fails to do so, the Court may pass any order or come to any decision on that point.—14 W. R. 247.

WHERE, in a suit for the filing of an award made on a private reference to arbitration, the Court of first instance, holding that there was no reason to remit such

award to the reconsideration of the arbitrator under the provisions of Act X. of 1877, s. 520, or to set it aside under s. 521, did not proceed to give judgment according to such award followed by a decree, but merely directed that such award should be filed, *held* that its order was not appealable as a decree or as an order.—*Ramadin v. Mahesh*, I. L. R., 2 All 471.

AN AWARD was remitted under s. 520 of Act X. of 1877. The arbitrators refused to reconsider it, and the Court thereupon proceeded with the suit, and gave the plaintiffs a decree. The defendants appealed from such decree on the ground, amongst others, that the award had been improperly remitted under s. 520. *Held* that the question whether the award had been properly remitted under s. 520 or not could be entertained in such appeal. The worshippers at a public mosque can maintain a suit to restrain the superintendents of such mosque from using it or its appurtenant rooms for purposes other than those for which they were intended to be used, and from doing acts which are likely to obstruct worshippers in entering or leaving such mosque.—*Abdul Rahman and others (Defendants) v. Yar Muhammad and others (Plaintiffs)*, I. L. R., 3 All. 636.

THE plaintiff in a suit, which had been referred to arbitration, offered before the arbitrator to be bound by the evidence of the defendant given on a certain oath. With the arbitrator's consent the defendant accepted such offer, and gave evidence on such oath. The arbitrator made an award in accordance with the evidence so given. The plaintiff objected to the award, not on any of the grounds mentioned in ss. 520 and 521 of the Civil Procedure Code, but on the ground that the procedure of the arbitrator had been illegal. The Court disallowed this objection, and gave a judgment and decree in accordance with the award. *Held* by Straight, J., that such decree, being in accordance with the award, was not appealable. *Held* by Stuart, C.J., that the award not being open to objection on any of the grounds mentioned in ss. 520 and 521 of the Civil Procedure Code, and the decree being in accordance with the award, the decree was not appealable. *Held* by Oldfield, J., that the procedure adopted by the arbitrator being illegal, not being warranted by the Oaths Act, and there being in reality no award within the meaning of the Civil Procedure Code, the decree therefore was appealable. *Per* Stuart, C.J., that the procedure of the arbitrator did not require to be warranted by the Oaths Act, as he was entitled by virtue of his office to proceed as he did.—*Bhagirath v. Ram Ghulam*, I. L. R., 4 All. 283.

THE plaintiff in this suit sued the defendants to recover certain moneys presented to him on his marriage, which he alleged the defendants had received and appropriated to their own use. The defendants denied that they had received such moneys, but admitted that such moneys had been credited by the plaintiff's father to the firm in which they, the plaintiff, and the plaintiff's father were jointly interested against a larger amount of moneys belonging to the firm which had been expended on the plaintiff's marriage. The parties agreed to refer the matter in dispute between them to arbitration, and to abide by the decision of the arbitrator. The arbitrator decided that the plaintiff could not recover the moneys he sued for, and which had been credited to the firm of which he was a partner, as a larger sum had been expended on his marriage out of the funds of the firm. The plaintiff obtained the opinions of certain pandits to the effect that, under Hindú law, gifts on marriage are regarded as separate acquisitions, and prayed that the Munsif would remit the award with these opinions to the arbitrator. The Munsif remitted the award with the opinions, requesting the arbitrator to consider them, and to return his opinion in writing within a certain period. The arbitrator having refused to act further, the Munsif proceeded to determine the suit, and gave the plaintiff a decree on the ground that, in a joint Hindú family, presents received on marriage do not fall into the common fund. *Held* (Pearson, J., dissenting) that there being no illegality apparent on the face of the award, the Munsif was not justified in remitting the award or in setting the award aside and proceeding to determine the suit himself, but that he should have passed judgment in accordance with the award.—*Nanak Chand and others (Defendants) v. Ram Narayan (Plaintiff)*, I. L. R., 2 All. 181.

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the

surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them: that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.*, the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and, as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sadik Ali Khan (Plaintiff) v. Imdad Ali Khan and others (Defendants)*, I. L. R., 3 All. 286.

521. An award remitted under section 520 becomes void on the M.S.C.C.

Grounds for setting aside refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds (namely)—

- (a) corruption or misconduct of the arbitrator or umpire;
 - (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;
 - (c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;
- and no award shall be valid unless made within the period allowed by the Court.

THE neglect of some of the arbitrators is misconduct within the meaning of this section.—8 W. R. 171. See also 22 W. R. 418.

AN AWARD of arbitration can only be set aside for corruption or partiality, but not on the ground of inconsistency.—W. R. Sp. 153.

AN ARBITRATION-AWARD as to division of property left to minor sons, though assented to by their guardian, was set aside so far as regarded those sons on proof that the partition was injurious to them.—1 W. R. 280.

IF AN arbitration-award is set aside, and the matter is tried as a suit, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made before him.—17 W. R. 516.

NOTHING which passes between the parties to a suit in any attempt at arbitration or compromise should be allowed to effect the slightest prejudice to the merits of their case as it eventually comes to be tried before the Court.—20 W. R. 172.

THE refusal of arbitrators to amend a clearly bad award is misconduct on their part, within the meaning of this section, justifying its being set aside.—3 W. R. 168. See also 11 W. R. 140; 15 W. R., F. B., 9; (P. C.) 23 W. R. 429; 24 W. R. 188.

AN AWARD of arbitration will not be invalidated by reason of one of the persons interested having become a lunatic after the proceedings before the arbitrator were substantially concluded, and before the final publication of the award.—7 W. R. 5.

AN AWARD is not reversible except under this section. An arbitrator is not bound by technical rules of Court. He is appointed to give an equitable award, and can decide a case upon a document whether stamped or unstamped.—1 W. R. 12.

A JUDGMENT passed within the time allowed by s. 324, Act VIII., 1859 (corresponding with s. 521, Act XIV., 1882), viz., 10 days after the submission of the award to the Court, is not a final judgment under s. 325 (corresponding with s. 522).—12 W. R. 93. See also 20 W. R. 311.

AN ORDER under s. 251 of the Civil Procedure Code, setting aside an award, made on a reference to arbitration in the course of a suit, under chapter xxxvii. of the Code, on the ground of the arbitrator's misconduct, is not subject to revision by the High Court in the exercise of the powers conferred on it by s. 622 of the Code.—Chattar Singh v. Lekhnaj Singh, I. L. R., 5 All. 293.

AN ORDER of a Civil Court setting aside an arbitration-award, being an interlocutory order, is not open to an appeal immediately; but when the Court sets aside the award on the ground of misconduct on the part of the arbitrator, and after hearing the case on its merits, makes its decree in favour of the plaintiff, it is competent to the defendant to appeal against that decree.—14 W. R. 327. See also 22 W. R. 420.

AN AWARD was remitted under s. 520 of Act X. of 1877. The arbitrators refused to reconsider it, and the Court thereupon proceeded with the suit, and gave the plaintiff a decree. The defendants appealed from such decree on the ground, amongst others, that the award had been improperly remitted under s. 520. *Held* that the question whether the award had been properly remitted under s. 520 or not could be entertained in such appeal. The worshippers at a public mosque can maintain a suit to restrain the superintendents of such mosque from using it or its appurtenant rooms for purposes other than those for which they were intended to be used, and from doing acts which are likely to obstruct worshippers in entering or leaving such mosque.—Abdul Rahman and others (Defendants) v. Yar Muhammad and others (Plaintiffs) I. L. R., 3 All. 636.

A CASE was referred by consent to arbitration, and, after having been recalled into Court, was again referred. An award was made by the arbitrator, and filed in Court. The defendants then objected, on the ground that they had no notice after the second reference, and that they were not heard, and that the arbitrator had otherwise misconducted himself. These objections were disallowed by the Subordinate Judge, who gave a decree in the terms of the award. This decree was upheld by the Judge on appeal, who, however, found that the arbitrator had been guilty of misconduct. *Held* that, if the decree of the first Court was not final under s. 325, Act VIII. of 1859, all that the lower Appellate Court could do was to remand the case to be dealt with on its merits; but inasmuch as there had been an award and a decree thereon, which was final within the terms of that section, the lower Appellate Court had no jurisdiction to hear the appeal, or to express any opinion on what had passed in the first Court.—Wazir Malton and another (Defendants) v. Lulit Singh and another (Plaintiffs), I. L. R., 7 Cal. 166.

M.S.C.C.

522. If the Court sees no cause to remit the award or any of the

Judgment to be accorded to the award.

has been made to set aside the award, or if the Court has refused such application, matters referred to arbitration for reconsideration in manner aforesaid, and if no application

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award, or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Decree to follow.

A PLAINTIFF'S allegation in a former suit having been overruled in arbitration, he is not estopped from bringing a fresh suit on the finding of the arbitrators.—6 W. R. 68.

As long as the order of a Munsif quashing an arbitration-award subsists in full form, the award cannot be said to exist as a binding award between the parties.—21 W. R. 261.

IN APPEALING to set aside an award as not binding upon the appellant, he is not bound to appeal against every interlocutory order.—(P. C.) 5 W. R. 21 (P. C. R. 616).

A DECREE was held to be in accordance with the award, and therefore final under this section, although it did not embody a suggestion of two out of the three arbitrators, which suggestion the first Court dealt with as mere surplusage.—20 W. R. 266.

A JUDGMENT of a Court, given in accordance with an award of arbitration, is final under s. 325, Act VIII, 1859 (corresponding with ss. 522, 588, Act XIV., 1882), even if there has been corruption and misconduct on the part of the arbitrators.—7 W. R. 205; 8 W. R. 171.

A JUDGMENT given on an arbitration is final under this section when it is according to the award, but not otherwise; an appeal will lie on the ground that it is contrary to the award.—3 W. R. 168. See also 11 W. R. 140; 15 W. R., F. B., 9; (P. C.) 23 W. R. 419, 24 W. R. 188.

ALTHOUGH no appeal will lie under this section against a judgment passed according to the award as prescribed in s. 327 (corresponding with s. 525), an appeal will lie, under s. 11, Act XXIII. of 1861, against an order made in execution-proceedings taken upon that judgment.—13 W. R. 62.

THE addition, in a judgment according to an award, of a trifling direction upon a matter not referred to the arbitrators, which was quite separable from the other parts of the award, and did not affect the decision on the matter referred, was held not to affect the finality of the judgment.—17 W. R. 352.

WHERE a suit has been referred to arbitration by an order of Court, and the Court afterwards gives judgment according to the award made upon such reference, such judgment is final, and no appeal lies therefrom.—1 HAY. 366 (Marshall 163), 14 W. R. 33, 17 W. R. 30., (P. C.) 23 W. R. 429. See 15 W. R., F. B., 9.

WHERE the order of the Court which made the reference to arbitration declining to pass judgment according to the award is reversed in appeal, the lower Appellate Court's order is open to special appeal, the above section applying only to the Court by which a case is referred to arbitration.—12 W. R. 93. See 22 W. R. 447.

THE power to file an award includes the power to inquire if there was a submission to arbitration, and this question is concluded by the decree, which is final under ss. 526 and 522 of the Code of Civil Procedure.—*Micharaya Gúruvu* (Plaintiff), Appellant, *v.* *Sadasiva Parama Gúruvu* (Defendant), Respondent, I. L. R., 4 Mad. 319.

THE term "judicial proceeding," as used in Act X of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhái Bhágubháí v. Amarsang Khemá Bhái*, I. L. R., 2 Bom. 553.

S. 325, Act VIII., 1859 (corresponding with ss. 522, 588, Act XIV., 1882), is not applicable to private awards, and ought to be enforced under s. 327 (corresponding with ss. 525, 526, Act XIV., 1882); and an appeal will lie from the order of a Court directing its enforcement.—3 W. R. 154. See 14 W. R. 255; 15 W. R. F. B., 9; 21 W. R. 182.

SUBMISSION to arbitration is revocable before award made.—7 W. R. 269. Not arbitrarily, but for good cause; the fact of one of the parties to the agreement revoking his submission is not a sufficient cause within the meaning of s. 326, Act VIII., 1859 (corresponding with ss. 523, 524, Act XIV., 1882).—(P. C.) 10 W. R. 51; 15 W. R. 331; 21 W. R. 395; 22 W. R. 522.

HELD that an appeal lies from a decree passed in accordance with an award when such decree is impugned on the ground that there is no award in law or in fact, upon which judgment and decree could follow under s. 522, Civil Procedure Code. *Joymungul Singh v. Mohun Ram* (3 Suth. P. C. C. 145; S. C., 23 W. R. 429), and *Bhagirath v. Ram Ghulam* (I. L. R., 4 All. 283) observed on.—*Lachman Das v. Brijpal*, I. L. R., 6 All. 174.

A CASE was referred to the arbitration of five persons, with a proviso that, in the event of any two of the arbitrators being absent, the arbitration should be continued by the other three. Two of the arbitrators named were the pleaders on either side, and these two, with the consent of the parties, ceased to act as arbitrators, but argued the matter before the other arbitrators. *Held* that the award made by the other three arbitrators named was a valid award.—*Debendra Nath Shaw v. Aubhoy Churn Bagchi*, I. L. R., 9 Cal. 905.

S. 522 of the Code of Civil Procedure, 1877, which provides that no appeal shall lie from a decree upon an award, except in so far as the decree is in excess of, or not in accordance with, the award, assumes that the award has been regularly and properly passed by arbitrators duly appointed. Where two of five arbitrators nominated by the parties to a suit, and appointed by the Court, had not consented before, and, after appointment, declined to act, and the Court appointed two arbitrators in their place against the consent of one of the parties to the suit, *held* that, under the circumstances, the appointment of the new arbitrators was not warranted by the provisions of s. 510 of the Code of Civil Procedure, and the order of reference to such arbitrators, the award made by them, and the decree passed upon the award, were illegal. *Held* also that the High Court could set aside the decree under the powers given by s. 622 of the Code of Civil Procedure.—*Pugardin v. Moidin*, I. L. R., 6 Mad. 414.

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not

having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them : that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained : and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz*, the settlement of the accounts, and the Court should, under s. 520 of Act X of 1877, have remitted the award for the reconsideration of the arbitrator, and, as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts ; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—Sadik Ali Khan (Plaintiff) *v.* Imdad Ali Khan and others (Defendant), I. L. R., 3 All. 286.

523. When any persons agree in writing that any difference between them shall be referred to the arbitration M.S.C.O.

Agreement to refer to arbitration may be filed in Court. of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in Court.

The application shall be in writing, and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein, and the parties cannot agree as to the nomination.

IN AN agreement to submit to arbitration, which was filed in Court under the provisions of s. 523 of the Code of Civil Procedure, it was stipulated that the decision of the arbitrator should be accepted as final, and that no appeal therefrom should be made by either party. *Held* that this stipulation did not prevent the Court from setting aside the award on the ground of misconduct on the part of the arbitrator.—Ranga *v.* Sithay, I. L. R., 6 Mad. 368.

HELD by the Full Bench (Oldfield, J., dissenting).—That an order refusing to file in Court an agreement to refer to arbitration is not appealable. *Per* Oldfield, J.—That such an order is appealable, and the court-fee payable on the memorandum of appeal is an *ad-valorem* fee computed on the value of the subject-matter in dispute in the appeal. Janki Tewari *v.* Gayan Tewari (I. L. R., 3 All. 427) distinguished by Stuart, C.J., and followed by Oldfield, J.—Daya Nand *v.* Bakhtawar Singh, I. L. R., 5 All. 333.

UNDER Act X. of 1877, ss. 523 and 525, parties to a suit, as well as persons not engaged in litigation, may agree to refer matters in dispute between them to private arbitration without the intervention of the Court, and may apply to have the agreement filed ; and the mere fact that the suit is pending with respect to the matters

in dispute is not of itself a sufficient reason to induce the Court to refuse to file the agreement.—*Harivalabdás Kallianrás v. Utamchand Máneckchand*, I. L. R., 4 Bom. 1. See also I. L. R., 6 Cal. 251.

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them: that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.*, the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and, as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sadik Ali Khan (Plaintiff) v. Imdad Ali Khan and others (Defendants)*, I. L. R., 3 All. 286.

M.S.C.C. 524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to proceedings under order of reference. reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

WHERE the partner of a firm in their partnership-deed agreed to refer their disputes to arbitration, and the reference made in pursuance of this agreement gave the arbitrators a power to make partition, but omitted a power to sell, *held*, on the award being made a rule of Court, that the Court had no power, under s. 326, Act VIII. of 1859, to order the sale of certain property of which the arbitrators were unable to make partition, and the sale of which they recommended on that ground.—*Chunnamoney Dossee and another (Plaintiffs) v. Nistarinee Dossee (Defendant)*, I. L. R., 3 Cal. 357.

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such

sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them: but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them: that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.* the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and, as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlements of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sidik Ali Khan (Plaintiff) v. Imdad Ali Khan and others (Defendants)*, I. L. R., 3 All. 286.

525. When any matter has been referred to arbitration without M.S.C.O.

Filing award in matter referred to arbitration without intervention of Court.

the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates that the award be filed in Court.

The application shall be in writing, and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

An application to enforce an arbitration-award under this section may be made without any valuation of the suit.—14 W. R. 255.

THERE is no appeal from an order refusing to file an award under this section.—*Vaithalinga Pillai v. Rathvam Pillai*, 4 Ind. Jur. 392

THE benefit of this section will be lost if the application for enforcement of an award of private arbitration be not made within 6 months.—5 W. R. 123.

POSSESSION under a private award of arbitration would suffice to make the award valid, under cl. 3, s. 3, Reg. VI. of 1813, without the intervention of the Court.—6 W. R. 94.

AWARD should be filed in Court. Effect of not filing as laid down in s. 327, Act VIII., 1859 (corresponding with ss. 525, 526, Act XIV., 1882).—1 W. R. 163. See also 25 W. R. 152.

EXCEPT in the cases mentioned in the Act, there is no appeal from a decree which is passed in term of an award.—*Manji Premji Shet v. Maliyakal Koyapen Korja Kaji*, 4 Ind. Jur. 396.

THERE is nothing in Act VIII. of 1859 to prevent parties, who have a suit pending in Court, to submit the subject-matter of that suit and other matters in dispute to arbitration under this section.—W. R. Sp., Mis., 21.

A PRIVATE award may be valid and binding, though no proceedings under s. 327, Act VIII., 1859 (corresponding with ss. 525, 526, Act XIV., 1882), have been taken to enforce it.—7 W. R. 269. See also 9 W. R. 441; 20 W. R. 420.

WHEN a private award between parties is filed in a Court under this section, the prescribed course is for the Court to give judgment and pass a decree, and not to order execution before such decree has been passed.—21 W. R. 295.

A SMALL Cause Court has jurisdiction, under this section, to entertain an application to file a private arbitration-award relating to a debt not exceeding the amount cognizable by such Court if the defendant resides within its jurisdiction.—10 W. R. 85. See 13 W. R. 233.

ON AN application under this section to have an award filed in Court, it was held that the word "award" as used in the plaint must be taken to include the whole document which is scheduled to the plaint, i.e., the formal judgment as well as the decree—(P. C.) 26 W. R. 10.

A SUBMISSION to private arbitration need not be put in writing to be valid, and a private award made in pursuance thereof will be respected by the Courts if duly performed. Both submission and award may be proved without *ikrarnamah*.—W. R., Sp 76. See also 18 W. R. 533.

AN APPEAL, on the allegation of want of consent of parties, lies from the order of a lower Court under s. 327, Act VIII., 1859 (corresponding with s. 525, Act XIV., 1882), directing a private award of arbitration to be filed and enforced.—6 W. R. 60. See also 15 W. R., F. B., 9; 24 W. R. 188.

AN ORDER rejecting an application to file an award under this section is not a decree, and is therefore not appealable.—(F. B.) 6 W. R. Mis., 83; 7 W. R. 401; 11 W. R. 57; 12 W. R. 85. But see 14 W. R. 255; 15 W. R., F. B., 9; 12 W. R. 182. Even though the order award costs.—11 W. R. 104.

THE above section incorporates the provision in s. 522 as to the finality of the judgment given according to the award, and puts the award filed under s. 525 in the same position as the award filed under s. 522. Where a Court files an arbitration-award, and passes a decree, that decree is final.—21 W. R. 248.

HELD (Oldfield, J., dissenting) that an appeal does not lie from an order disallowing an application to file an award under s. 525 of the Civil Procedure Code. *Janki Tewari v. Gayan Tewari* (I. L. R., 3 All. 427)* distinguished by Stuart, C.J. The same case followed by Oldfield, J.—*Bhola v. Gobind Dayal*, I. L. R., 6 All. 186.

IT was decided by the Full Bench in *Lala Ishuri Pershad v. Her Bhanjan Tewaree* (15 W. R. 9, F. B.) that the question of the existence of a legal award is one which is open to appeal, but that when the existence of the award has been finally determined, and judgment is given in accordance with the award, then there is no appeal.—*Bahur Meah* (Defendant) *v. Jumun Meah* (Plaintiff), I. L. R., 2 Cal. 362.

MATTERS in dispute were referred to arbitration without the intervention of the Court. An award was made, and upon an application under s. 525 of the Civil Procedure Code to file the award, one of the parties showed cause why the award should not be filed, and the Subordinate Judge held the objection to be good. Held that no appeal lay.—*Sree Ram Chowdhry v. Denobundhoo Chowdhry*, I. L. R., 7 Cal. 490.

A SUBORDINATE Judge, although invested with the jurisdiction of a Small Cause Court Judge, does not, on that account, become a Small Cause Court Judge, nor his Court such a Court within the meaning of Act X. of 1877. He therefore has power, within the limits of his ordinary pecuniary jurisdiction, to receive and file awards of arbitrators under s. 525 of that Act.—*Balkrishna v. Lakshman*, 1 L. R., 3 Bom. 219.

BY THE amendment of the plaint, a case under s. 525 of Act X. of 1877 was taken out of the scope of ch. xxxvii. of that Act. *Held* that this being so, the decree of the Court of first instance was appealable. *Held* also, where a private award determined a matter not referred to arbitration, that a claim under s. 525 of Act X. of 1877, that such award should be filed in Court, was properly dismissed.—*Juala Singh and another (Plaintiffs) v. Narain Das (Defendant)*, 1 L. R., 3 All. 541.

WHERE a matter has been referred to arbitration, without the intervention of a Court of Justice, by parties one of whom is an agriculturist, and an award has been made thereon, any person interested in the award may, without obtaining the conciliator's certificate, apply for the filing of the award under s. 525 of the Code of Civil Procedure, the provisions of which are not superseded by s. 47 of the Dekkhan Agriculturists' Relief Act, 1879.—*Gangádhara Sakháram v. Mahádu Santáji*, 1 L. R., 8 Bom. 20.

UNDER Act X. of 1877, ss. 523 and 525, parties to a suit, as well as persons not engaged in litigation, may agree to refer matters in dispute between them to private arbitration without the intervention of the Court, and may apply to have the agreement filed; and the mere fact that the suit is pending with respect to the matters in dispute is not of itself a sufficient reason to induce the Court to refuse to file the agreement.—*Harivalabdas Kallias v. Utamchand Maneckchand*, 1 L. R., 4 Bom. 1. See also 1 L. R., 6 Cal. 251.

WHERE an arbitration-bond provides that the matters in dispute referred to the arbitrators may be taken up and dealt with *seriatim*, and the award delivered bit by bit (khurd khurd), it is not necessary under s. 327 of Act VIII. of 1859 (corresponding with ss. 525, 526, Act XIV., 1882) that all the matters referred to should have been decided before the first portion of the award dealing with some only of the subjects in dispute can be filed.—*Srimoti Shoshemukhi Dabia (Appellant) v. Nobin Chunder Roy and others (Respondents)*, 1 L. R., 4 Cal. 92.

PER SPANKIE, J.—An order refusing an application to file a private award in Court is appealable as a decree. *Jokhn Rai v. Bacho Rai* (N. W. P. H. C. Rep. 1868. p. 353) and *Hussaini Bibi v. Mohsin Khan* (1 L. R., 1 All. 156) impugned and distinguished: *Vishnu Bhau Joshi v. Ravji Bhau Joshi* (1 L. R., 3 Bom. 18) distinguished. *PER STUART, C.J.*—An order refusing an application to file a private award in Court on grounds not mentioned in ss. 520 and 521 is a decree, and appealable as such.—*Janki Tewari and others (Plaintiffs) v. Gayan Tewari and another (Defendants)*, 1 L. R., 3 All. 427.

WHEN an application is made to a Court to file an award under s. 525 of the Code of Civil Procedure, and an objection is made to the filing of it upon any of the grounds mentioned in s. 520 or 521, the proper course for the Court to pursue is to dismiss the application, and to leave the applicant to bring a regular suit to enforce the award, in which all the objections to its validity may be properly tried and determined. Where no such ground of objection is made to the filing of the award, and the Court consequently orders it to be filed, no appeal lies against that order.—*Huronath Chowdhry v. Nistarini Chowdrani*, 1 L. R., 10 Cal. 74.

WHERE an application is made under s. 525 of the Code of Civil Procedure to have an award filed in Court, and it appears to the Court, on cause shown why the award should not be filed, that there is a reasonable dispute between the parties on any of the grounds mentioned in ss. 520 or 521, the application should be dismissed. Under s. 525 of the Code of Civil Procedure, sufficient cause may be shown by affidavit or verified petition. *Sree Ram Chowdhry v. Denobundhoo Chowdhry* (1 L. R., 7 Cal. 490) and *Sashti Charan Chatterjee v. Tarak Chandra Chatterjee* (8 B. L. R. 315) referred to.—*Ichamoyee Chowdhraanee v. Prosunno Nath Chowdhri*, 1 L. R., 9 Cal. 557.

NO APPEAL lies from an order upon an application to file an award under s. 525 of the Civil Procedure Code. Upon an application to file an award under s. 525 of the Civil Procedure Code, the Court to which the application is made has no jurisdiction to enquire whether the defendant has agreed to the terms of the instrument referring the matter to arbitration, or whether the terms were obtained by fraud. When such objections are made, it is the duty of the Court to reject the application under s. 525, and refer the parties to a regular suit. The proper court-fee upon an application to file an award under s. 525 is the court-fee prescribed for applications, and not the court-fee upon a plaint.—*Bijadhar Bhugut v. Monohur Bhugut*, I. L. R., 10 Cal 11.

WHEN a Court has refused to file an award upon an application under s. 525, Civil Procedure Code, no appeal lies against such decision, which is an order, and not a decree; but the High Court can interfere under s. 622. An award made under s. 525, which is partly within and partly exceeds the terms of the submission to arbitration, cannot be enforced by summary procedure under s. 526 as to such portion as does not exceed those terms. To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a devasam as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure.—*R. Ry. Mana Vikrama, Zamorin, Maharája Bahadur of Calicut* (Plaintiff), *Petitioner, v. Mallichery Kristnan Nambudri* (Defendant), Counter-Petitioner, I. L. R., 3 Mad 68.

WHERE an award was made and signed by the arbitrators on the 5th of August, 1881, but was not delivered to the parties till the 13th of September following, *semble* that an application to file the award, made on the 25th of February, 1882, under the provisions of s. 525 of the Code of Civil Procedure, was not barred by limitation. It is clearly the intention of the Legislature that a party to an arbitration should have six months to enforce the award, under s. 525 of the Code of Civil Procedure, from the time when he is in a position to enforce it. Under ss. 525 and 526 of the Code of Civil Procedure, the Court has full power to enter into the question of the sufficiency of the cause shown against the filing in Court of an award. *Dandekar v. Dandekars* (I. L. R., 6 Bom. 663) followed; *Ichamoyee Chowdhrahee v. Prosunno Nath Chowdhri* (I. L. R., 9 Cal. 557) dissented from. After an award has been made and handed to the parties, the functions of the arbitrators cease. They have no power afterwards to deal with an application for review of their decision.—In the matter of the Petition of Dutto Singh; *Dutto Singh v. Dosad Bahadur Singh*, I. L. R., 9 Cal. 575.

THE term "to show cause" in ss. 525 and 526 of the Code of Civil Procedure, Act X. of 1877, does not mean merely to allege cause, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court. Matters in dispute between the parties were referred to seven arbitrators without the intervention of a Court. The arbitrators, or so many of them as could be got together, held sittings extending over some months, and at each sitting they came to a decision, either unanimously or by a majority, on different questions submitted to them. These decisions were entered on the minutes of their proceedings; and at their last sitting the arbitrators all agreed, and informed the parties, that the decisions so arrived at constituted the final award, and gave directions for embodying those decisions in the shape of a formal document, which was drawn up on a subsequent day, but was signed by four only out of the seven arbitrators. The remaining arbitrators not being asked to sign it, they never did sign it. *Held* that the actual award was an oral award made by all the arbitrators on the last day of their joint sittings, and the drawing up of the formal award was a purely ministerial act to give effect to the previously completed judicial act. The omission to take the signatures of the minority of the arbitrators to the document, which formed the record of the award, was not fatal to the award. Amongst other matters the arbitrators were asked to make a division of certain fields to which the parties were equally entitled. The arbitrators decided the other matters, but as regards the fields said that it was inconvenient to do so in consequence of the rains, and ordered the parties "to receive the profits half and half, and to pay the assessment half and half." *Held* that the award left undetermined one of the principal

subjects of dispute; and as the Court had no power to remit the award to the arbitrators, the applicant was entitled to a judgment setting aside the order for filing the award.—*Dandekar v. Dandekars*, I. L. R., 6 Bom. 663.

526. If no ground, such as is mentioned or referred to in section M.S.C.C. Filing and enforcement 520 or section 521, be shown against the of such award. award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

WHEN sufficient cause is shown against a private award, the Court may refuse to enforce it under this section.—21 W. R. 377.

UNDER the law previous to Act VIII. of 1859, the summary refusal to enforce an arbitration-award did not bar the use of the award as the basis of a regular suit.—W. R. Sp. 283 (L. R. 65).

THE power to file an award includes the power to inquire if there was a submission to arbitration, and this question is concluded by the decree which is final under ss. 526 and 522 of the Code of Civil Procedure.—*Micharva Gúruvu* (Plaintiff), Appellant, *v. Sadasiva Parama Gúruvu* (Defendant), Respondent, I. L. R., 4 Mad. 319.

THE term "judicial proceeding," as used in Act X. of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhái Bhághubháí v. Amarsang Khemá Bhái*, I. L. R., 2 Bom. 553.

A PLAINTIFF cannot sue for moveables by a suit to enforce an award. He may sue for damages and losses sustained with regard to his share of ancestral property under his general rights of inheritance, whether adjudicated upon by a previous award of arbitration or not; and as regards lands, he may sue either for enforcement of the award or upon his general rights.—5 W. R. 165.

HELD by Melvill and Pinhey, JJ.—Before effect can be given to an award by execution-proceedings, there must be a judgment according to the award and a decree following thereon. A judgment-debtor, against whom an order for execution has been obtained behind his back, is not estopped from afterwards contending that there exists no decree which can be executed.—*Ishwardás Jagjivandás v. Dosibai*, I. L. R., 7 Bom. 316.

Per SPANKIE, J.—An order refusing an application to file a private award in Court is appealable as a decree. *Jokhun Rai v. Bucho Rai* (N. W. P. II. C. Rep. 1868, p. 353) and *Hussaini Bibi v. Mohsin Khan* (I. L. R., 1 All. 156) impugned and distinguished: *Vishnu Bhau Joshi v. Ravji Bhau Joshi* (I. L. R., 3 Bom. 18) distinguished. *Per Stuart, C.J.*—An order refusing an application to file a private award in Court on grounds not mentioned in ss. 520 and 521 is a decree, and appealable as such.—*Janki Tewari and others* (Plaintiffs) *v. Gayan Tewari and another* (Defendants), I. L. R., 3 All. 427.

WHERE an application is made under s. 525 of the Code of Civil Procedure to have an award filed in Court, and it appears to the Court, on cause shown why the award should not be filed, that there is a reasonable dispute between the parties on any of the grounds mentioned in ss. 520 or 521, the application should be dismissed. Under s. 525 of the Code of Civil Procedure, sufficient cause may be shown by affidavit or verified petition. *Sree Ram Chowdhry v. Denobundhoo Chowdhry* (I. L. R., 7 Cal. 490); and *Sashti Charan Chatterjee v. Tarak Chandra Chatterjee* (8 B. L. R. 315) referred to.—*Ichamoyee Chowdhranee v. Prosunno Nath Chowdhry*, I. L. R., 9 Cal. 557.

WHEN a Court has refused to file an award upon an application under s. 525, Civil Procedure Code, no appeal lies against such decision, which is an order, and not a decree; but the High Court can interfere under s. 622. An award made under s. 525, which is partly within and partly exceeds the terms of the submission to arbitration, cannot be enforced by summary procedure under s. 526 as to such portion

as does not exceed those terms. To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a *dévassain* as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure.—*R. Ry Māna Vikrama Zāmorin, Mahārājā Bahadur of Calcut (Plaintiff), Petitioner, v Mallichery Kristnan Nambudri (Defendant), Counter-Petitioner, I. L. R., 3 Mad. 68.*

WHERE an award was made and signed by the arbitrators on the 5th of August, 1881, but was not delivered to the parties till the 13th of September following, *semble*, that an application to file the award, made on the 25th of February, 1882, under the provisions of s. 525 of the Code of Civil Procedure, was not barred by limitation. It is clearly the intention of the Legislature that a party to an arbitration should have six months to enforce the award, under s. 525 of the Code of Civil Procedure, from the time when he is in a position to enforce it. Under ss. 525 and 526 of the Code of Civil Procedure, the Court has full power to enter into the question of the sufficiency of the cause shown against the filing in Court of an award. *Dandekar v. Dandekars (I. L. R., 6 Bom. 663)* followed; *Ichamoyee Chowdhrahee v. Prosunno Nath Chowdhri (I. L. R., 9 Cal. 557)* dissented from. After an award has been made and handed to the parties, the functions of the arbitrators cease. They have no power afterwards to deal with an application for review of their decision.—In the matter of the Petition of Dutto Singh; *Dutto Singh v. Dosad Bahadur Singh, I. L. R., 9 Cal. 575.*

CHAPTER XXXVIII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

M.S.C.C.

527. Parties claiming to be interested in the decision of any ques-

tion of fact or law may enter into an agreement Power to state case for Court's opinions. in writing, stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,

(a) a sum of money fixed by the parties, or to be determined by the Court, shall be paid by one of the parties to the other of them; or

(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

M.S.C.C.

528. If the agreement is for the delivery of any property, or for

the doing, or the refraining from doing, any When value of subject-matter must be stated. particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

M.S.C.C.

529. The agreement, if framed in accordance with the rules herein-

Agreement to be filed and numbered as suit. before contained, may be filed in the Court which would have jurisdiction to entertain a suit; the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

530. When the agreement has been filed, the parties to it shall **M.S.C.O.**

Parties to be subject to Court's jurisdiction. be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

531. The case shall be set down for hearing as a suit instituted **M.S.C.O.**

Hearing and disposal of case. under Chapter V., the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them, and

(b) that they have a *bonâ fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow, and shall be enforced in the manner provided in this Code for the execution of decrees.

THE term "judicial proceeding," as used in Act X. of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhai Bhagubhai v. Amarsang Khemâ Bhâi*, I. L. R., 2 Bom. 553.

CHAPTER XXXIX.

OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

532. In any Court to which this section applies, all suits upon bills

Institution of summary suits upon bills of exchange, &c. of exchange, hundis, or promissory notes, may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No 172, or in such other form as the High Court may, from time to time, prescribe.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit, unless he obtains leave from a Judge, as hereinafter mentioned, so to appear and defend;

and in default of his obtaining such leave, or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the

plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

The defendant shall not be required to pay into Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith.

Explanation.—This section is not confined to cases in which the bill, hundi, or note sued upon, together with mere lapse of time, is sufficient to establish a *prima facie* right to recover.

THE High Court has power to extend the time within which a defendant in a suit brought under chap. xxxix. (summary procedure on negotiable instruments) of the Civil Procedure Code can come in and obtain leave to defend: therefore, in a suit in which it appeared that the defendant resided at Peshawar, the time for the defendant to obtain leave from the Court to appear and defend was extended to 28 days.—Groom and another v. Wilson, I. L. R., 3 Cal, 539.

533. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

534. After decree, the Court may, under special circumstances, set aside the decree, and, if necessary, stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

NO APPEAL lies under Act X. of 1877 from an order made under that Act rejecting an application for an order setting aside a decree made *ex-parte* against a defendant.—Gulab Singh v. Lachman Das, I. L. R., 1 All. 748 (F.B.).

535. In any proceeding under this chapter the Court may order the bill, hundi, or note on which the suit is founded, to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

537. Except as provided by sections 532 to 536 (both inclusive), the procedure in suits under this chapter shall be the same as the procedure in suits instituted under chapter V.

538. Sections 532 to 537 (both inclusive) apply only to—

- (a) the High Courts of Judicature at Fort William, Madras, and Bombay ;
- (b) the Court of the Recorder of Rangoon ;
- (c) the Courts of Small Causes in Calcutta, Madras, and Bombay
- (d) the Court of the Judge of Karáchi; and
- (e) any other Court having ordinary original civil jurisdiction, to which the Local Government may, by notification in the official Gazette, apply them. .

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may, from time to time, alter or cancel any such notification.

CHAPTER XL.

OF SUITS RELATING TO PUBLIC CHARITIES.

539. In case of any alleged breach of any express or constructive trusts created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General acting *ex officio*, or two or more persons having a direct interest in the trust, and having obtained the consent in writing of the Advocate-General, may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) appointing new trustees under the trust ;
- (b) vesting any property in the trustees under the trust ;
- (c) declaring the proportions in which its objects are entitled ;
- (d) authorizing the whole or any part of its property to be let, sold, mortgaged, or exchanged ;
- (e) settling a scheme for its management ;
- or granting such further or other relief as the nature of the case may require.

The powers conferred by this section on the Advocate-General may, outside the Presidency-towns, be, with the previous sanction of the

Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

Act No. X. of 1840, section two, is hereby repealed.

S. 539 of the Civil Procedure Code, 1877, does not apply to the case of an endowment for purposes religious as well as charitable.—Thanga Karuppa Nādan and another (Second and Third Plaintiffs), Appellants, *v.* Arumūga Nādan (Third Defendant), Respondent, I. L. R. , 5 Mad. 383.

WORSHIPPERS or devotees of an idol are entitled to bring a suit, complaining of a breach of trust, with reference to the funds or property belonging to the idol or appendant to its temple. *Quere.* Whether, if the suit had been brought after Act X. of 1877 came into force, s. 539 of that Act could be held applicable to the *devasthan* of an idol or temple, dedicated merely to the purposes of such idol or temple?—Rādhabāi Kom Chimnaji Sali *v.* Chimnaji bin Ramji Sali, I. L. R. , 3 Bom. 27.

CERTAIN Mahomedans sued to set aside a mortgage of endowed property belonging to a mosque, the decree enforcing the mortgage, and the sale of the mortgaged property in execution of that decree, and for the demolition of buildings erected by the purchaser, and the ejectment of the purchaser. *Held* that the plaintiffs, as Mahomedans entitled to frequent the mosque and to use the other religious buildings connected with the endowment, could maintain the suit, and s. 539 of the Civil Procedure Code had no application to the case, the endowment being a religious institution within the meaning of s. 24 of Act VI. of 1871, and therefore governed by Mahomedan law.—Zafaryab Ali *v.* Bakhtawar Singh, I. L. R. , 5 All. 497.

IN a suit by two of the worshippers at a certain mosque, instituted after having obtained the sanction of the Advocate-General under s. 539 of the Civil Procedure Code, against the mutawalli of the mosque, and two other persons to whom the mutawalli had mortgaged part of the endowed property to secure the repayment of a loan, it appeared that one of the mortgagees had sold some of the *waqf* property in execution of a decree which he had obtained upon his mortgage, and the property had been purchased by the other mortgagee. The plaintiffs prayed that the property purchased might be declared to be *waqf*; that the sale in execution might be declared to be invalid; that a mutawalli might be appointed by the Court; and that the costs of doing the acts of *waqf* might be defrayed from the profits of the property belonging to the endowment. *Held* that, so far as regarded that portion of the prayer as fell within the provisions of s. 539 of the Code, the plaintiffs were not entitled to sue, as they were not "persons having a direct interest in the trust" within the meaning of the section, and that the suit should have been instituted under s. 14 of Act XX. of 1863 after sanction obtained under s. 18. *Held* also that though the plaintiffs might possibly have obtained leave to sue under s. 30 of the Code on behalf of themselves and the other persons attending the mosque, they not having obtained such leave were not entitled to institute the suit for the purpose of obtaining the relief asked for in the other prayers of the plaint. The words "trustee, manager, or superintendent of a mosque," &c., mentioned in Act XX of 1863, mean the trustee, manager, or superintendent of a mosque, &c., to which the provisions of the Act are applicable, not the trustee, &c., of any mosque. And such persons are those to whom the provisions of Reg. XIX. of 1810 were applicable. The mosques, &c., to which the provisions of that Regulation were applicable, were mosques for the support of which endowments had been granted in land by the Government of the country or by individuals, and the mosques, &c., to which the provisions of Act XX. of 1863 apply are, not any mosques, &c., but any mosques for the support of which endowments in land have been made by the Government or private individuals.—Jan Ali and another (Plaintiffs) *v.* Ram Nath Mundul and others (Defendants), I. L. R. , 8 Cal. 32.

IN or about the year 1839 a temple to the god Shri Anantnāthji was erected in Bombay by the Dossa Oswall Bania caste, the religion of which caste is the Jain religion. A large portion of the funds required for building the temple was advanced by one Nursey Nāthā, at that time the leading man in the caste; the rest was obtained from the caste by subscription. The firm of Nursey Nāthā acted as the bankers to the caste and to the temple, received all the gifts and offerings made

by the worshippers, and for many years administered all the affairs of the temple. The sums advanced by Nursey Náthá were gradually, but entirely, repaid to him out of the gifts and offerings. There were three separate funds, of which separate accounts were kept in the books, *viz.*, (1) the darása fund, which was devoted to the temple purposes, such as maintenance of priests, repairs, &c., and gifts to poorer temples; (2) the sadáran fund, which was more extended in its objects, but still limited to religious and charitable purposes, such as payments to poor devotees irrespective of their caste, &c.; and (3) the mahájan fund, which was devoted to caste purposes, such as purchase of caste utensils, &c. All three funds were collected at the temple. Gifts and offerings were made by all worshippers at the temple, whether members of the caste or not. Subscriptions were made only by members of the caste. All the regular subscriptions came from the caste exclusively, and the great bulk of the gifts and offerings came from the caste also. Only about Rs. 12,000 had been given by outsiders up to the date of the suit, while nearly 6 lákhs had been given by the caste. Nursey Náthá died in 1842, and his adopted son Virji Nursey became head of the firm, which continued to manage the funds of the temple under the name of Virji Nursey & Co. Virji Nursey died in 1852, and Hurbhum Nursey (defendant No. 1) succeeded him. The firm meanwhile had invested the funds of the temple in eight lots of immoveable property. In 1867 the caste determined to appoint trustees of the temple-property, and in September, 1867, a trust-deed was executed, whereby Hurbhum Nursey, Kessowji Naik, Ghellabhoy Puddumsey (defendants Nos. 1, 2 and 3), together with three others who were dead at the time of this suit, *viz.*, Jewráj Ruttonsey, Tricunji Wellji, and Madan Tejsey, were appointed trustees of all the immoveable property belonging to the temple. The deed set forth the objects to which the income of the property should be applied, and provided that the surplus should be invested in Government securities, in corporation shares, or in landed property, but in no other shares of any description whatsoever. It also authorized the trustees to invest surplus moneys in the firm of Virji Nursey. It was admitted that, subsequently to June, 1869, the trustees managed the temple, and not only the immoveable property, but all the funds. A debt of Rs. 2,40,000 was due from the firm of Virji Nursey & Co. to the temple and caste when the trustees took over the management. In 1870 the firm of Virji Nursey & Co. became insolvent, and in their schedule the trustees were entered as creditors in respect of darása account, Rs. 1,57,649; on mahájan account, Rs. 68,017; on sadáran account, Rs. 22,597. It was admitted that the trustees knew of this entry in the said schedule. They, however, received no dividend, although other creditors, including Kessowji Naik (defendant No. 2), were paid two annas in the rupee. This sum of Rs. 2,40,000 due to the temple was wholly lost. In April, 1867, Rs. 15,000 of the temple-funds were invested—it did not appear by whom—in the name of Ghellabhoy Puddumsey (defendant No. 3), and in August, 1868, a sum of Rs. 15,000 was advanced to one Jaiáz Pirbhoy. In 1869 a sum of Rs. 10,000 was advanced by the trustees to Nursey Kessowji & Co., which was never repaid, nor was any interest received upon it. It was lost on the failure of that firm in 1879. The principal partner of that firm (Nursey Kessowji) was the only son of Kessowji Naik (defendant No. 2), who also had an interest in it. In 1877-78 various loans were made by the trustees to three mills, in which one or more of the trustees was interested. Of Rs. 55,000 lent to the mills and to Nursey Kessowji & Co. Rs. 42,000 were lost. Half a lách of outstanding gifts to the temple remained uncollected owing to the negligence of the trustees. Two suits brought by another caste against the trustees were defended out of the temple-funds. All the defendants (trustees), with the exception of Kessowji Naik, were in needy circumstances. In 1880 a hundred members of the caste protested against the management of caste and temple affairs by the defendants. The plaintiffs, six in number, took part in the protest, and filed the present suit in 1881. Thereupon there was a caste agitation in favour of the defendants, who were all shettis of the caste. A meeting of the caste was held, and a series of resolutions, supporting the defendants' management, and approving of their conduct, was passed, and a document to that effect was signed by 1,468 persons—the whole caste in Bombay numbering only 1,500. The plaintiffs sought to make the defendants liable in respect of the moneys lost to the caste and temple-funds, and prayed for the appointment of new trustees and for the settlement of a scheme. The defendants denied the charges of negligence, and pleaded that the suit was not properly constituted, not having been brought

under s. 30 or 539 of the Civil Procedure Code of 1877, and that it was in contravention of Reg. II of 1827, ch. 2, s. 21. They relied upon the fact that the caste had approved of their conduct, and had allowed them to defend this suit at the expense of the caste. They contended that under these circumstances the plaintiffs were not entitled to maintain the suit, and that the Court would not interfere with, or control the decision of the majority of, the caste in matters relating to the internal management of its affairs. *Held* that s. 30 of the Civil Procedure Code (Act X. of 1877) did not apply. If the plaintiffs had any right of action, it was a complete right of action vested in each of them, and not a mere joint right shared with others, and incomplete unless they united themselves with others. They sued as subscribers to the temple and devotees of the idol, and, as such, each had a right to complain of maladministration. They were entitled to sue in their own right and in their own name without permission of the Court or notice to other parties interested. *Held* also (following *Thanga Karuppa v. Arumuga Nadan*), I. L. R., 5 Mad. 383, that s. 539 of Act X. of 1877 did not apply. The three funds administered by the defendants were different in character. The mahajan fund was a purely secular fund; the other two funds were religious and charitable funds. Even if the case came under the Civil Procedure Code (XIV. of 1882), s. 539 would not apply, that section being permissive or directory, and not mandatory. Any person interested in the proper observance of a religious endowment may sue in his own name to have the trust properly administered. The section does not prohibit a private suit, and does not make the sanction of the Advocate General a condition precedent. The gifts to the temple comprised in the darasa and sadaran funds were irrevocably dedicated to a public charity, and, therefore, the approval, by the caste, of the conduct of the trustees, was no bar to the suit. They were also dedicated to the idol, who was a public, not a mere private household divinity. The ideal personality of such an idol is well recognized, and in case of misappropriation of the property he is entitled to the protection of the public authorities, on the ground that it has been devoted to public religious purposes, and must not be wasted even by the donors. The management of the temple belonged to the Dossa Oswall Bania caste, and not to the whole Jain community. Although the donations were irrevocably dedicated to public purposes, the donors had never lost the right, which was attached to the caste from the beginning, of managing the temple which they had founded, and their management could only be interfered with as a public charitable trust on proof of maladministration. On the evidence, *held* that the defendants were not liable for losses prior to 1867. It was not clearly proved that they were managers of the temple-funds before that date. *Held* also that the defendants were liable for the losses incurred subsequently to 1867. They assumed the management on the execution of the trust-deed in that year, and ought to have taken steps to recover the moneys which had been improperly advanced on loan or otherwise negligently invested. Not having done so, they were guilty of wilful neglect, and were liable to refund the moneys which had been lost. The liability was, however, confined to the first three defendants, it not being proved that the remaining defendants had ever acted as trustees. The negligence of the trustees in not taking steps to recover the Rs. 2,40,000 due from the firm of Virji Nursey & Co. was a clear breach of trust. The evidence showed that although the whole sum could not have been recovered at any time during the trusteeship of the defendants, yet that some portion of the money might have been obtained if due diligence had been used, and that other creditors of the firm had actually been paid two annas in the rupee. The first three defendants were, therefore, liable to refund two annas in the rupee of such portion of the Rs. 2,40,000 as belonged to the darasa and sadaran funds. As to the mahajan fund, it belonged to the caste, and the caste had condoned its misapplication, which it had power to do. The defendants were also held liable to refund such other sums as had come into their hands, and had been lost in consequence of their negligence. *Held* also that, under the provision of s. 10 of the Limitation Act (XV. of 1877), the suit was not barred. The property became vested in the defendants for specific purposes; and, although it was no longer in their hands, the suit fell within the section, inasmuch as the money could be traced to the hands of the trustees, and the losses were caused by their misconduct and improper dealing with it. The Court removed the defendants from the trusteeship, and ordered a scheme to be settled.—*Thackersey Dewraji v. Harbhum Nursey*, I. L. R. 8 Bom. 432.

PART VI. OF APPEALS.

CHAPTER XLI.

OF APPEALS FROM ORIGINAL DECREES.

540. Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal to lie from all original decrees, except when expressly prohibited. appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

AN ORDER under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi (Judgment-debtor) v. Fakir (Decree-holder)*, I. L. R., 3 All. 382.

AN ORDER made under s. 37, Bengal Rent Act (Beng. Act VIII. of 1869), is a decree within the meaning of the definition contained in the Civil Procedure Code (Act X. of 1877), and an appeal lies therefrom under the provisions of s. 540.—*Brojendro Coomar Roy v. Krishno Coomar Ghose*, I. L. R., 7 Cal. 684.

UNDER s. 540 of the Civil Procedure Code an appeal lies from decrees passed *ex parte*. If a defendant appears at the first hearing, and files a written statement, he should not be placed *ex parte*.—*Anantharāma Pattater (Second Defendant), Appellant, v. Madhava Paniker (Plaintiff's Representative), Respondent*, I. L. R., 3 Mad. 264.

HELD by Stuart, C.J., and Straight and Tyrrell, JJ. (*Oldfield and Brodhurst, JJ.*, dissenting), that a defendant against whom a decree has been passed *ex parte*, and who has not adopted the remedy provided by s. 103 of the Civil Procedure Code, cannot appeal from such decree under the general provisions of s. 540.—*Lal Singh and others v. Kunjan and others*, I. L. R., 4 All. 387.

AN APPELLANT, who has obtained a decree setting aside the decision of the Court of first instance, is not entitled to a further appeal to the High Court on the ground that he is dissatisfied with some of the findings recorded in the judgment of the lower Appellate Court, an appeal from an appellate decree under s. 584 being strictly restricted to matters contained in the decree alone.—*Koylash Chunder-Koosari v. Ram Lal Nag*, I. L. R., 6 Cal. 206.

APPLICATIONS for the extension of the period for the submission of an award and orders thereon should be made in writing and recorded. When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of first instance.—*Manji Premji Set (Plaintiff), Appellant, v. Maliyakel Koyassan Koya Haji (Defendant), Respondent*, I. L. R., 3 Mad. 59.

NOTHING remained to be done in a suit except to hear arguments, for which a time had been appointed. Neither the plaintiff nor his pleader appeared at the appointed time. The Court consequently dismissed the suit. *Held* that its decree was appealable under s. 540 of Act X. of 1877, and the lower Appellate Court should have entertained the appeal and disposed of it with reference to the provisions of s. 565, and ss. 102 and 103 were not applicable to the circumstances.—*Raichand (Plaintiff) v. Mathura Prasad and others (Defendants)*, I. L. R., 3 All. 292.

Per Spankie, J.—An order refusing an application to file a private award in Court is appealable as a decree. *Jokhun Rai v. Bucho Rai* (N. W. P. H. C. Rep. 1868, p. 353) and *Hussaini Bibi v. Mohsin Khan* (I. L. R., 1 All. 156) impugned and distinguished: *Vishnu Bhau Joshi v. Ravji Bhau Joshi*, (I. L. R., 3 Bom. 18) distinguished. *Per Stuart, C.J.*—An order refusing an application to file a private

award in Court on grounds not mentioned in ss. 520 and 521 is a decree, and appealable as such.—Janki Tewari and others (Plaintiffs) v. Gayan Tewari and another (Defendants), I. L. R., 3 All. 427.

WHERE the Court of first instance held that the land sued for was not included in the defendant's garden, and they were not the owners of it, but that they could not be ejected from it, as they were in possession under a lease which had not expired, and that the question whether such land was included in the defendant's garden, and that they were the owners of it, was not *res judicata*; and the Court made a decree dismissing the suit in these terms, "Ordered that the plaintiff's claim as it stands at present be dismissed:" Held that the defendants were entitled, under Act X. of 1877, s. 540, to appeal from such decree.—Lachman Singh v. Mohun, I. L. R., 2 All. 497 (F.B.).

By a decree in an administration-suit, A was appointed receiver "to manage the estate." A died, and by a subsequent order B was appointed receiver. One of the defendants in the suit applied to have B removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused. Held that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—Mubibai (Plaintiff) v. Linji Nowroji Banaji and others (Defendants); Harivallabhadas Callandas (Original Defendant), Appellant, v. Ardasar Framji Moos (Receiver and Respondent), I. L. R., 5 Bom. 45.

WHERE a Judge, after the defendant's written statement was put in, framed certain preliminary issues, and decided them, directing part of plaintiff's claim to be dismissed, and part to be tried on the merits (which a trial might necessitate the taking of an account from defendant), held that no appeal lies from such an order either on the part of the plaintiff because the Civil Procedure Code only allows an appeal against a portion of the decision when there has been a decision relating to the disposal of the entire suit, or on the part of the defendant inasmuch as there had been no final order to take an account.—Udai Rajah Raja Velugoti Kumara Yachama Nayadu Bahadur, Panch Hazar Munsudar Raja of Venkatagiri (Plaintiff), Appellant in R. A. 52 and Respondent in R. A. 63 of 1880, v. Mahommed Rahimtulla Sahib (Defendant), Respondent in R. A. 52 and Appellant in R. A. 63 of 1880, I. L. R., 3 Mad. 13.

AT THE hearing of a suit, a party, though he had sufficient warning of what was necessary, did not take the proper steps to cause the production of the documentary, and only admissible, evidence of a material fact which had to be proved by him; and the decision was against him. The record of another proceeding would, it was said, have supplied this evidence; and an application had been previously made, on which the order of the Judge was that "the matter would be decided when the case was tried, and the record would be sent for, if necessary." No further application to the Court was made, and no attempt to supply this evidence. Held that if there had been, as there might have been, an oversight by the party in not calling the attention of the Judge to the above order, and in not tendering the evidence, there had been no omission on the Judge's part affording ground for appeal.—Chandichurn Shashlun v. Durga Churn Mirdua, I. L. R., 9 Cal. 260.

THE plaintiffs, the widow and son respectively of N, deceased, claimed immoveable property inherited from his father by N, and also immoveable property which had devolved upon N from his brother, who had predeceased him, and mesne-profits of such properties. The Court of first instance, finding that the claim to the former property was admitted, and that to the latter was not denied, but resisted as barred by s. 13 of Act X. of 1877, and holding it not to be so barred, made a decree returning the plaint to the plaintiffs that they might, after correcting it, file it either in the Revenue Court in regard to the profits of the former property, or in the Civil Court for possession of the latter property. Held that, although the claim of the plaintiffs was not either decreed or dismissed, yet as the right and title asserted by them to such properties was implicitly recognised by such decree, the defendants were entitled to appeal from it.—Behari Bhagat (Defendant) v. Begam Bibi and others (Plaintiffs), I. L. R., 3 All. 75.

M sued K and J to enforce a right of pre-emption in respect of property which he alleged K had sold to J. K denied that she had sold such property to J. J set up as a defence that M had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. J appealed, making M and K respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. J then appealed to the High Court, making K the respondent. *Held* that neither the appeal from the original decree in suit, nor the appeal from the appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—Jumna Singh and another (Defendants) *v.* Kanar-un-nisa (Plaintiff), I. L. R., 3 All. 152 (F. B.)

The lower Appellate Court (Subordinate Judge) decided on appeal by the defendant from the decree of the Court of first instance (Munsif) that the Court of first instance had no jurisdiction to entertain the suit, as the value of the subject-matter of the suit exceeded the pecuniary limits of its jurisdiction; and ordered that "the appellants appeal be decreed, the decision of the Munsif be reversed, and the record of the case be sent to the Munsif to return the plaint to the plaintiff for presentation to the proper Court." The plaintiff appealed to the High Court from such order as an order returning a plaint to be presented to the proper Court. *Held* that such order could not be regarded as one to which art. 6 of s. 588, Act X of 1877, was applicable. That relates to orders returning plaints for amendment or to be presented to the proper Court passed by a Court of first instance, and not to an order by an Appellate Court upon an appeal to it from the decree of a Court of first instance on general grounds. The plaintiff's proper course was to have preferred a second appeal.—Bindeshri Chaubey and others (Plaintiffs) *v.* Nandu (Defendant). I. L. R., 3 All. 456.

541. The appeal shall be made in the form of a memorandum in

Form of appeal.

writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

What to accompany memorandum.

Such memorandum shall set forth, concisely and under distinct

Contents of memorandum.

heads, the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

AN ORDER made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—Adarji Edulji *v.* Manikji Edulji, I. L. R., 4 Bom. 414.

542. The appellant shall not, without the leave of the Court, urge

Appellant confined to grounds set out.

or be heard in support of any other ground of objections; but the Court, in deciding the appeal, shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

Not only may the plea of *res judicata*, though not taken in the memorandum of appeal, be entertained in second appeal, under the provisions of s. 542 of Act X. of 1877, but even when such plea has not been urged in either of the lower Courts

or in the memorandum of appeal, if raised in the second appeal, it must be considered and determined either upon the record as it stands, or after a remand for finding of fact.—*Muhammad Ismail (Plaintiff) v. Chhattar Sing and another (Defendants)*, I. L. R., 4 All. 69.

HELD by Pearson, J., and Straight, J. (Spankie, J., dissenting), as follows : That, in disposing of a second appeal, the High Court is competent, under s. 542 of Act X. of 1877, to consider the question whether the plaintiff has any cause of action or not, although such question has not been raised by the defendant appellant in the Courts below or in his memorandum of second appeal, but is raised for the first time at the hearing of such appeal. That the cause of action of a person claiming the right of pre-emption in the case of a conditional sale arises when the conditional sale takes place, and not when it becomes absolute ; and therefore, where a conditional sale took place in 1867, and after it had become absolute a person sued to enforce his right of pre-emption in respect of the property sold, basing his claim upon a special agreement made in the interval between the date of the conditional sale and the date that it became absolute, and alleging that his cause of action arose on the latter date, that the suit was not maintainable, the plaintiff having no right of pre-emption at the time of the conditional sale.—*Lachman Pershad (Defendant) v. Bahadur Singh and others (Plaintiffs)*, I. L. R., 2 All. 884.

543. If the memorandum of appeal be not drawn up in the manner Rejection or amendment hereinafore prescribed, it may be rejected, or of memorandum. be returned to the appellant for the purpose of being amended within a time to be fixed by the Court, or be amended then and there.

When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

544. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

The Court of Appeal has power under Act VIII. of 1859, s. 337 (corresponding with Act X. of 1877, s. 544), to draw up what would be a fair decree as regards all the parties to a suit, although some of them may not have appealed.—*Joykisto Cowar v. Nityanund Nundy*, I. L. R., 3 Cal. 738. But see 2 P. C. R. 766 (11 B. L. R. 375 ; L. R. I. A. Sup. 135).

Of Staying and Executing Decrees under Appeal.

545. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree ; but the Appellate Court may, for sufficient cause, order the execution to be stayed :

If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may, for sufficient cause, order the execution to be stayed :

Execution of decree not stayed solely by reason of appeal.

Stay of execution of appealable decree before time for appealing has expired.

Provided that no order shall be made under this section unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made:

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

S. 283 does not constitute an exception to the procedure laid down by s. 545. Where property has been released from attachment under s. 280. and subsequently declared liable to attachment by a decree against which an appeal is pending, a sale of such property before the final result of the appeal is not illegal by virtue of the provisions of s. 283.—*Fathula v. Muniyappa*, I. L. R., 6 Mad. 98.

The present applicant having taken out execution of a decree held by him, and the judgment-debtor having appealed to the District Court, the two opponents became sureties, under s. 338 of Act VIII. of 1859, that the judgment-debtor would "obey and fulfil all such orders and decrees as should be given against him in appeal," and, in default of his so doing, they bound themselves "to pay jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of Rs. 812-8-0, adjudge." Held that the obligation of the sureties to fulfil the decree of the Appellate Court was not confined to the first decree of that Court, but extended to the final decree which it passed upon the case being remanded by the High Court in special appeal.—*Shivlall Khubchand (Applicant) v. Apaji Bhivrav and others (Opponents)*, I. L. R., 2 Bom. 654.

546. If an order is made for the execution of a decree against

Security in case of order for execution of decree appealed against.

which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Appellate Court,

or the Appellate Court may, for like cause, direct the Court which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall, on the application of the judgment-debtor, be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

WHERE an order, requiring the decree-holder to give security within three days, is made under s. 546 by the Judge of the Court in which the decree was passed, and in which the execution is pending, such order is appealable as a decree under the provisions of s. 2, and s. 244, cl. (c).—*Luchmeput Singh v. Sitanath Doss*, I. L. R., 8 Cal. 477.

547. No such security as is mentioned in sections 545 and 546

No such security to be required from Government or public officer.

shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Of Procedure in Appeal from Decrees.

548. When a memorandum of appeal is admitted, the Appellate Registry of memorandum Court or the proper officer of that Court shall of appeal. endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Such book shall be called the Register of Register of Appeals. Appeals.

549. The Appellate Court may, at its discretion, either before the Appellate Court may re- respondent is called upon to appear and answer, quire appellant to give se- or afterwards on the application of the respond- curity for costs. ent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British When appellant resides out of British India. India, and is not possessed of any sufficient immoveable property within British India independent of the property (if any) to which the appeal relates.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

S 519 of the Civil Procedure Code applies to all appeals, including appeals *in formâ pauperis*—*Seshienger v. Jain-ul avadin*, 4 Ind. Jur. 507.

WHERE the Appellate Court demands from an appellant security for costs, the Court may extend the time within which it orders such security to be furnished : but if no application is made for such extension of time, and such security is not paid within the time entered, it is imperative on the Court, under Act X. of 1877, s. 549, to reject the appeal.—*Haidri Bai (Plaintiff) v. The East India Railway Company*, 1 L. R., 1 All. 687.

A SUITOR *in formâ pauperis* may be called on to give security for costs under s. 549 of the Civil Procedure Code, but very special grounds must be shown to support such an application.—*Nusseeruddeen Biswas v. Ujjal Biswas* (17 Suth. W. R. 68) dissented from.—*Sâ-hây-yangar* and another (Sixth and Ninth Respondents in S. A. 663 of 1879), *Petitioners, v. Jainulavadin* and another (Appellants in S. A. 663 of 1879), *Counter-Petitioners*, 1 L. R., 3 Mad. 66.

Appellate Court to give notice to Court whose decree appealed against.

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send, with all practicable despatch, all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any Copies of exhibits in Court whose decree appealed against. such papers in such Court of which he requires copies to be made ; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

551. The Appellate Court may, if it thinks fit, after fixing a time

Power to confirm decision of lower Court without sending it notice. for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time, confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court, and without serving notice on the respondent or his pleader; but in such case the confirmation shall be notified to the same Court.

THE order of adjudication made under s. 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment.—*Royal Reddi (Second Plaintiff), Appellant, v. Linga Reddi (Defendant), Respondent, I. L. R., 3 Mad. 1.*

THE plaintiff sued to recover possession of certain immoveable property sold to him by the first defendant, a Hindú widow. The second defendant answered that his father and the first defendant's husband were undivided brothers, and that, as a childless widow, she had no right to sell the property. Both the lower Courts upheld the sale as absolute, on the ground that she was competent to make it as widow of a separate Hindú. The District Judge heard the appeal *ex parte* under Act X of 1877, s. 551. *Held* that the decrees of the lower Courts were unsustainable, as they did not contain the limitation pointed out above; and remanded the case for the trial of the issue, whether there were any such special circumstances as would justify the absolute sale by the first defendant to the plaintiff; and that the District Judge ought not to have disposed of the appeal *ex parte* under Act X. of 1877, s. 551.—*Gurunáth Nilkanth v. Krishnáji Govind, I. L. R., 4 Bom. 462.*

ON AN appeal from a decision in a civil suit of the Assistant Commissioner of Ajmere to the Commissioner of Ajmere, the latter, feeling doubtful on a question of the nature specified in s. 17 of the Ajmere Court's Reg. I. of 1877, referred such question, under s. 36 of that Regulation, to the Chief Commissioner of Ajmere and Mairwara. The Chief Commissioner dealt with the case as prescribed in s. 37 of that Regulation, and returned it to the Commissioner, who dismissed the suit in accordance with the Chief Commissioner's judgment. The plaintiff preferred an appeal to the Chief Commissioner from the Commissioner's decision. The Chief Commissioner did not make any order on the memorandum of appeal admitting it, or directing that it should be registered, or that the respondent should be summoned, or that the appellant should appear on a certain day under s. 551, Act X. of 1877, but issued a notice to the appellant's Counsel to appear on a certain day. The appellant's Counsel appeared on that day, and the Chief Commissioner intimated that he was acting under Act X. of 1877, s. 551. The appellant's Counsel then proceeded to address the Chief Commissioner, and was heard for some time, and then stopped, in consequence of the Chief Commissioner resolving to refer to the High Court the question whether the appeal from the Commissioner's decision lay to him or to Her Majesty in Council. The Chief Commissioner subsequently referred such a question to the High Court. *Held* by the Full Bench, on a reference by a Division Bench before which the Chief Commissioner's reference came, that such question arose "in the trial of an appeal" within the meaning of the Ajmere Court's Reg. I. of 1877, s. 21, and was properly referred to the High Court. *Held* by the Division Bench that the appeal from the Commissioner's decision lay, in this particular case, not to the Chief Commissioner, but to Her Majesty in Council.—*Thakur of Masuda v. The Widows of the Thakur of Naudwara, I. L. R., 2 All. 819 (F.B.).*

552. The Appellate Court, unless where it confirms, under section

Day for hearing appeal. 551, the decision of the lower Court, shall fix a day for hearing the appeal.

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

553. Notice of the day so fixed shall be stuck up in the appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in Chapter VI. for the service on a defendant of a summons to appear and answer; and all rules applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause notice to be served on the respondent or his pleader under the rules above referred to.

554. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Procedure on Hearing.

555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

556. If, on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

If the appellant attends, and the respondent does not attend, the appeal shall be heard *ex parte* in his absence.

When an appeal is dismissed, under Act X. of 1877, s. 555, for the appellant's default, the order dismissing it is not appealable.—*Abinad Baksh v. Gobindi*, I. L. R., 2 All. 616.

AN ORDER under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi (Judgment-debtor) v. Fakir (Decree-holder)*, I. L. R., 3 All. 382.

WHERE a suit has been instituted under Act VIII. of 1859, but decided at a time when Act X. of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of the latter Act distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal, presented when Act X. of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its re-admission under s. 558; and if such re-admission is refused, he is entitled to an appeal under s. 558.—*Elahi Buksh v. Marachow*, I. L. R., 4 Cal. 825.

AN APPELLATE Court, the appellant not attending in person or by his pleader, instead of dismissing the appeal for default, as provided by s. 556 of Act X. of 1877, proceeded, in contravention of the provisions of that law, to dispose of the appeal on the merits, and dismissed it. The appellant preferred a second appeal to the High Court, contending that the Appellate Court had acted contrary to law. *Held* that the Appellate Court had so acted, and its decision could only be treated as a dismissal for default, and that, so treating it, the proper and only course open to the

appellant was to have applied under s. 558 for the re-admission of his appeal, and under these circumstances the second appeal would not lie. *Nand Ram v. Muhammad Baksh* (I. L. R., 2 All. 616) followed.—*Kanahi Lal and others (Defendants) v. Naubat Rai* (Plaintiff), I. L. R., 3 All. 519.

557. If on the day so fixed, or any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the costs of issuing the notice, the Court may order that the appeal be dismissed :

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person, or by a pleader, or by a duly authorized agent.

Proviso.

558. If an appeal be dismissed under section 556 or section 557, the appellant may apply to the Appellate Court for the re-admission of the appeal ; and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Re-admission of appeal dismissed for default.

AN ORDER under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi (Judgment-debtor) v. Fakir (Decree-holder)*, I. L. R., 3 All. 332.

ON AN application under s. 558 of the Code of Civil Procedure for the re-admission of an appeal which had been decided *ex parte* against the applicant, it appeared that he had been misled by reason of the appeal having been transferred from the file of one Court to another, no notice of the transfer having been given to him by the pleaders in the case. *Held* that, under the circumstances, the applicant was entitled to have the appeal re-admitted.—*Narain Singh (Defendant). Appellant, v. Bhewrah Charan Panda and another (Plaintiffs), Respondents*, 8 Cal. Law Rep. 350.

WHERE a suit has been instituted under Act VIII. of 1859, but decided at a time when Act X. of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of the latter Act distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal, presented when Act X. of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its re-admission under s. 558 ; and if such re-admission is refused, he is entitled to an appeal under s. 588.—*Elahi Buksh v. Marachow*, I. L. R., 4 Cal. 825.

AN APPELLATE Court, the appellant not attending in person or by his pleader, instead of dismissing the appeal for default, as provided by s. 556 of Act X. of 1877, proceeded, in contravention of the provision of that law, to dispose of the appeal on the merits, and dismissed it. The appellant preferred a second appeal in the High Court, contending that the Appellate Court had acted contrary to law. *Held* that the Appellate Court had so acted, and its decision could only be treated as a dismissal for default, and that, so treating it, the proper and only course open to the appellant was to have applied under s. 558 for the re-admission of his appeal, and under these circumstances the second appeal would not lie. *Nand Ram v. Muhammad Baksh* (I. L. R., 2 All. 616) followed.—*Kanahi Lal and others (Defendants) v. Naubat Rai* (Plaintiff), I. L. R., 3 All. 519.

559. If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

Power to adjourn hearing, and direct persons appearing interested to be made respondents.

THE discretionary power of directing a person to be made a respondent, conferred on the Appellate Court by s. 559 of the Civil Procedure Code, is not limited by any provision in the Limitation Act (XV. of 1877).—*Manickya Moyee v. Boroda Prosad Mookerjee*, I. L. R., 9 Cal. 355.

THE Court of first instance gave the plaintiff in a suit for money a decree against the defendant B, exempting the defendants A and H. B appealed, making the plaintiff the respondent to the appeal. The plaintiff did not appeal from the decree of the Court of first instance in respect of the exemption of A and H. The Appellate Court made A a respondent to the appeal under s. 559 of the Civil Procedure Code, and, exempting B, gave the plaintiff a decree against A. *Held* that, inasmuch as s. 559 does not empower an Appellate Court virtually to make an appeal for an appellant, who has refrained from availing himself of his privileges under the law, by introducing for him other respondents than those he has included in his petition of appeal, and it could not be said that A was "interested in the result of the appeal," as, having the unappealed decree of the Court of first instance behind him, his position was secure, the Appellate Court had improperly made A a respondent to the appeal, and given a decree against him.—*Atma Ram v. Balkishen*, I. L. R., 5 All. 266.

560. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and if he satisfies the Court that the notice was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Re-hearing on application of respondent against whom *ex-parte* decree made.

WHEN an appeal has been heard *ex parte*, a re-hearing cannot be granted by the Court on an application under s. 560 of the Civil Procedure Code, except upon legal evidence produced by the respondent of the facts necessary to entitle him to such re-hearing.—*Muhammad Khan (Appellant) v. Dinomolee Dashya and another (Respondents)*, 8 Cal. Law Rep. 112.

AN APPLICANT, presenting a petition for the re-hearing of an appeal decided *ex parte*, must, at the time of making such application, be prepared to satisfy the Court that the notice of appeal was not duly served upon him, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing.—*Anunda Shaha Biswas alias Nyomuddin Sha Biswas v. Kema Bebee*, I. L. R., 6 Cal. 548.

AN APPEAL was heard *ex parte* in the absence of the respondent (defendant), and the judgment was given against him. He applied to the Appellate Court to re-hear the appeal, and the Appellate Court refused to re-hear it. He then appealed, not from the order refusing to re-hear the appeal, but from the decree of the Appellate Court. *Held* that he was not debarred, by reason that he had not appealed from the order refusing to re-hear the appeal, from appealing from the decree of the Appellate Court.—*Ram Jas (Defendant) v. Baij Nath (Plaintiff)*, I. L. R., 2 All. 567.

A SECOND appeal does lie from an *ex-parte* judgment without requiring the appellant to resort to a re-hearing under s. 560. S. 119 of the old Code prohibited an appeal from an *ex-parte* judgment; but there is no corresponding section to it in the new Code. It is true that s. 560 enables a respondent to move for a re-hearing when the appeal is heard *ex parte*, provided he can satisfactorily account for his

omission to appear at the hearing ; but this section is permissive, not mandatory. The new Code seems to leave it to the party concerned to decide whether he ought to seek a re-hearing or prefer a second appeal.—*Modalatha Kunhi Kanna Kurup* (1st Defendant), 3 Ind. Jur. 167.

561. Any respondent, though he may not have appealed against

any part of the decree, may, upon the hearing, may object to decree as if not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal, provided he has filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal.

Such objection shall be in the form of a memorandum, and the

Form of notice, and provisions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

THE notice of objections referred to in s 561 of the Civil Procedure Code must be filed not less than seven days before the date fixed for the hearing in the summonses issued to the public.—*Deo Kishen and another v. Maheshwar Sahai and others*, I. L. R., 4 All. 248.

A NOTICE of objection under s. 561 of the Code of Civil Procedure (Act XIV. of 1882) must be filed not less than seven days before the date (if any) fixed for the hearing of the appeal in the notice served upon the respondent. S. 5 of Act XV. of 1877 does not apply to an objection under s. 561 of the Procedure Code.—*Kally Prosunno Biswas v. Mungala Dassee*, I. L. R., 9 Cal 631.

OBJECTIONS to a decree under s. 561 of the Civil Procedure Code (Act XIV. of 1882) need not necessarily be filed seven days before the day originally fixed for hearing the appeal. When the hearing is postponed, it is sufficient if the objections are filed seven days before the day fixed for the postponed hearing, the object of s. 561 being merely to give the appellant timely intimation of proposed objections.—*Rangildás v. Báí Girja*, I. L. R., 8 Bom. 559.

A OBTAINED a decree for possession of land against B and for costs against B, C, D, and others, defendants in the suit. C and other defendants appealed against this decree so far as it awarded costs against them, making A and D respondents to the appeal. Under s. 561 D objected to that part of the decree which awarded possession of the land to A. *Held* on appeal that it was open to D, although improperly made a party to the appeal by C against A, to take objection to the rest of the decree.—*Timmaya v. Lakshmi*, I. L. R., 7 Mad. 215.

THE Court of first instance found for the defendants on the merits, and passed a decree in their favour without costs. The defendants appealed against that part of the decree which disallowed them their costs. The plaintiff filed a notice of objections to the decree on the merits as required by s. 561 of the Code of Civil Procedure (Act XIV. of 1882). The lower Court of Appeal varied the decree by allowing the defendants their costs of suit, and held that the plaintiff was not entitled to file any objections. *Held* that the Court of Appeal was in error in holding that the plaintiff's objections could not be entertained. S. 561 of the Code gives the respondent the power of taking any objection to the decree at the hearing of an appeal which he could have taken by way of appeal, provided he has filed a notice of his objections not less than seven days before the date fixed for the hearing of the appeal ; and this power is independent of whether an appeal lies on a mere question of costs. *Held* also that a finding, unaccompanied by the reasons for it, as required by s. 204 of the Code, is not a conclusive finding of fact binding on a Court of second appeal.—*Kámat v. Kámat*, I. L. R., 8 Bom. 368.

THE plaintiff sued the defendants for compensation for the wrongful taking of the fruit on a tree which he alleged belonged to him. The defendants set up as a

defence that the fruit on such tree had not been removed, and that such tree belonged to them. The Court of first instance dismissed the suit on the ground that the fruit on such tree had not been removed, but found incidentally that such tree belonged to the plaintiff. The plaintiff appealed from the decree of the Court of first instance; and the defendants objected to the decree, contending that such tree belonged to them. *Held* that, inasmuch as the Court of first instance did not, in deciding that such tree belonged to the plaintiff, decide a question substantially in issue, it did not decide in this matter "against the defendants," within the meaning of s. 561 of the Civil Procedure Code, and, as the decree was limited to dismissing the suit, the defendants as respondents were not qualified to take an objection which they could not have taken by way of appeal, and therefore the Appellate Court was not warranted by law in entertaining the objection taken by the defendants.—*Balak Tewari v. Kansil Misr and others*, I. L. R., 4 All. 491.

AN APPEAL having been filed on the 10th April, 1879, and the date for hearing fixed for May, 1879, a memorandum of objections under s. 521 of the Civil Procedure Code was filed by the respondent on the 18th September, 1879, before the actual hearing which took place in July, 1880. *Held* that the memorandum of objections, under s. 561 of the Code of Civil Procedure as amended by s. 86 of Act XII. of 1879, ought to have been filed not less than seven days before the date fixed for hearing, and was therefore inadmissible. On an application for review, *held* (*per* Maclean, J., distinguishing the case of *Ratansi Hullanji*, I. L. R., 2 Bom. 184) that nothing having been done, and no proceeding having been commenced by the respondent up to 31st May, 1879, under the Procedure Code as it existed prior to that date, the filing of the memorandum was governed by the present Code as amended, and therefore inadmissible. *Held* (*per* Mitter, J.) that the appeal, having been filed before Act XII. of 1879 was passed, was a proceeding within the meaning of s. 6 of the General Clauses' Act (I. of 1868), and that the new Act therefore did not affect the appeal.—*Ram Gobind Jugodeb (Defendant), Appellant, v. Denobundhu Sri Chundun Mohapatrer (Plaintiff), Respondent*, 9 Cal. Law Rep. 281.

WHERE the time for filing objections under s. 561 of the Civil Procedure Code expired on a day when the Court was closed, and objections were filed on the day the Court re-opened, *held* that such objections were filed within time. On the 16th March, 1874, L gave M a mortgage on certain land for Rs. 24,000 for a term of ten years, by which it was provided, *inter alia*, that the mortgagee should take the profits of the land in lieu of interest; that the mortgagee should grant a lease of the land to the mortgagor, the latter paying the former the profits of the land every harvest in lieu of interest; that, if the mortgagor failed to pay the mortgagee the profits of the land by the end of any year, he should pay interest on the principal amount of the mortgage at the rate of one per cent. calculated from the date of the mortgage, and in such case the mortgagee should have no claim to the profits; and that, if the mortgagor failed to pay the mortgagee the profits by the end of any year, the mortgagee should be at liberty to cancel the lease, and to enter on the land, and collect the rents thereof, and apply the same to payment of interest. On the 21st March, 1874, M gave L a lease of the land, under which Rs. 1,980 was the sum agreed to be payable annually as profits in lieu of interest. In 1879, M, who had not been paid any profits, sought to enforce in the Revenue Courts the condition as to entry on the land, but was successfully resisted by L's widow. On the 16th January, 1880, M sued L's widow for interest on the principal amount of the mortgage at the rate of one per cent. calculated from the date of the mortgage to the date of the suit, claiming the same by virtue of the provisions of the mortgage, on the ground that he had not been paid any profits. *Held* that the mortgage and lease-transactions must be regarded as one and indivisible, and the questions at issue between the parties be dealt with *quâ* mortgagor and mortgagee; that, so regarding such transactions and dealing with such questions, M and L did not stand in the position of "landholder" and "tenant," and the proceedings of 1879 in the Revenue Courts were had without jurisdiction; also that, although, looking at the terms of the contract of mortgage, it was the intention of the parties that, on the mortgagor failing to pay the mortgagee the profits by the end of any year, the latter should, in the first place, seek possession of the land, yet as M had never obtained possession, but on the contrary had been resisted when he sought to obtain it, his present claim

for interest was maintainable. The Court directed that so much of the interest as was due at L's death should be recoverable from such property of his as had come into his widow's hands; and as to the rest, which related to the period during which the widow had been in possession and in receipt of the profits, that it should be recoverable from her personally.—*Baghelin v. Mathura Prasad*, I. L. R., 4 All. 430.

562. If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point so Remand of case by Appellate Court. as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register, and proceed to investigate the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded.

AN APPELLATE Court has no power to remand a case except under the provisions of s. 562 of the Code of Civil Procedure.—*Mulun Mohun Poddar and another v. Bhoggomanto Poddar and others*, I. L. R., 8 Cal. 923.

THE right of appeal given by ss. 588 and 589 of Act X. of 1877 from an order of remand, as contemplated by s. 562, is not taken away by s. 586. *Chandhri Ranjit Singh v. Jafar Ali Khan* (I. L. R., 3 All. 18) followed.—*Mahadev Narsingh v. Ragho Keshav*, I. L. R., 7 Bom. 292.

A COURT in the exercise of appellate jurisdiction passed an order under s. 562 of the Civil Procedure Code, remanding a case of the Small Cause Court class as described in s. 586. *Held* that, under the express words of the second portion of s. 589 of the Code, an appeal does lie to the High Court from such an order.—*Kirte Mohaldar v. Ramjan Mohaldar*, I. L. R., 10 Cal. 523.

AN APPEAL from an order on appeal remanding a suit for re-trial is not to be confined to the question whether the remand has been made contrary to the provisions of s. 562 of Act X. of 1877 or not, but the question whether the decision of the Appellate Court on the preliminary point is correct or not may also be raised and determined in such an appeal.—*Badam (Defendant) v. Imrat and others (Plaintiffs)*, I. L. R., 3 All. 675.

ON AN appeal from an order under s. 562 of the Civil Procedure Code remanding the case, the High Court cannot consider the facts on which the lower Appellate Court passed the order of remand. All that it can do under s. 588, cl. 28, is to consider whether, on the findings of fact by the lower Appellate Court, that Court was right in remanding the case.—*Noimollah Pramanick v. Grish Narain Moonshee*, I. L. R., 8 Cal. 674.

BY THE amendment of the plaint a suit for the restoration of a pond, which it was alleged the defendants were wrongfully filling up, to its original condition, was altered into one for the protection of the plaintiffs from any infringement of, or for a declaration of their right to a share in the produce, and the use of the water, by way of easement. *Held* that the alteration in the plaint was a material one; and that an Appellate Court is not empowered by Act X. of 1877 to order or allow a plaint to be amended, or to remand a case under s. 562 of that Act for the purpose of such amendment.—*Farzand Ali v. Yusuf Ali*, I. L. R., 2 All. 669.

AS THE Limitation Act (XV. of 1877) shortens the period of limitation in the case of promissory notes payable on demand, the period of limitation in respect of such notes executed prior to 1st October, 1877, is governed by the provisions of s. 2 of the Act. When a Court of first instance, after taking evidence, dismisses a suit upon a preliminary objection without giving a decision upon the merits of the case, and the decree is reversed on appeal, the Court of Appeal, if it considers the evidence on

record sufficient, may decide the case, and is not bound to remand it for trial under s. 562 of the Civil Procedure Code.—*Bandi Subbayya (Defendant), Appellant, v. Madalapalli Subanna (Plaintiff), Respondent, I. L. R., 3 Mad. 96.*

S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindú and her adopted son sued as co-plaintiffs, claiming in the alternative either to recover the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, *held* that the suit was bad for misjoinder. *Held* also that when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it, by returning the plaint for amendment. *Farzand Ali v. Yusuf Ali (I. L. R., 2 All. 669)* dissented from.—*Lingammál v. Venkatammál, I. L. R., 6 Mad. 239.*

THE Court of first instance made an order returning the plaint in a suit to be presented to the proper Court, on the ground that it was not competent to try such suit. On appeal from such order the Appellate Court, holding that the Court of first instance was competent to try such suit, made an order "decreeing the appeal." It subsequently made an additional order directing that the case "should be returned for re-trial." On appeal to the High Court from such additional order, *held* that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which, under the last clause of s. 588 of Act X. of 1877, was final, and not an appeal from an order remanding a case under s. 562, the character of the original order of the Appellate Court not being altered by the passing of the additional order.—*Krishna Ram (Defendant) v. Narsingh Sevak Singh and others (Plaintiffs), I. L. R., 3 All. 855.*

A COURT of first instance dismissed a suit upon a preliminary point. On appeal by the plaintiff against the decree of such Court the then Judge of the Appellate Court, Mr. B, reversed the decree upon such preliminary point, and remanded the suit under s. 562 of Act X. of 1877 for the trial of a certain issue. The Court of first instance tried such issue, and made a decree in accordance with its finding thereon. On appeal against the decree of the Court of first instance the defendant again raised such preliminary point. The then Judge of the Appellate Court, Mr. K, dismissed the suit upon such preliminary point. *Held* that, as, although Mr. B had irregularly remanded the suit under s. 562 of Act X. of 1877, his decision disposed of such preliminary point, and only left open for trial the issue which he had directed to be tried, Mr. K. was not competent to re-try and decide such preliminary point.—*Suraj Din (Plaintiff) v. Chattar (Defendant), I. L. R., 3 All. 755.*

UPON an appeal, under s. 588, clause *w*, of the Civil Procedure Code, from an order of an Appellate Court under s. 562, remanding a case which has been disposed of upon a preliminary point in the Court of first instance, the High Court may enter into the merits of the adjudication by the Court of first instance on the preliminary point, and may, if it finds the order of the lower Appellate Court defective, allow the party, who had the benefit of a decree in the first Court, to retain that benefit. The purchaser of the rights and interests of a judgment-debtor who is a member of a joint family, at a sale in execution of a decree, does not acquire any title to the rights and interests of the other members of the family, unless it is clear that the judgment-debtor was sued in a representative capacity. *Muddun Thakur v. Kantoo Lall (I. L. R., 2 Cal 379)* distinguished.—*Loki Mahto and others (Plaintiffs) v. Agshore Ajaíl Lall and others (Defendants), I. L. R., 5 Cal. 144.*

563. When a case is remanded with directions to take any evidence

When further evidence so excluded, the Court to which the case is remanded shall not take any other evidence in the case, except evidence tendered to contradict the evidence so taken.

Limit to remand.

564. The Appellate Court shall not remand a case for a second decision, except as provided in section 562.

S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindú and her adopted son sued as co-plaintiffs, claiming in the alternative either to recover the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, *held* that the suit was bad for misjoinder. *Held* also that, when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it, by returning the plaint for amendment.—*Farzand Ali v. Yusuf Ali* (I. L. R., 2 All. 669) dissented from.—*Lingammál v. Venkatammál*, I. L. R., 6 Mad. 239.

565. When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court shall, after re-settling the issues, if necessary, finally determine the case, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

WHERE a Court of first appeal omits to determine a material issue of fact, the High Court as a Court of second appeal is not competent, under s. 565 of the Civil Procedure Code, to determine such itself, but should refer it for determination to the Court of first appeal.—*Sheo Ratan v. Lappu Kuar*, I. L. R., 5 All. 14.

566. If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question, the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required ; and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon, together with the evidence.

WHERE the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons, or, in the event of his absence, refer the questions to his successor for fresh trial.—*Assanullah v. Hafiz Mahomed Ali*, I. L. R., 10 Cal. 932.

ASSUMING that an Appellate Court, in deciding a case in a manner inconsistent with, and opposed to, the finding returned to it by the Court of first instance under Act X. of 1877, s. 566, in the absence of objections, acted irregularly, its decree could not be reversed or the case remanded on account of such irregularity, such irregularity not affecting the merits of the case or the jurisdiction of the Court.—*Akbari Begam v. Wilayat Ali*, I. L. R., 2 All. 908.

WHERE an Appellate Court, under Act VIII. of 1859, s. 354, refers to a lower Court issues for trial, and fixes a time within which, after the return of the finding, either party to the appeal may file a memorandum of objections to the same, neither party is entitled, without the leave of the Court, to take any objection to the finding, orally or otherwise, after the expiry of the period so fixed, without his having filed such memorandum.—*Ratan Singh v. Wazir*, I. L. R., 1 All. 165. See also under Act X. of 1877, s. 566.—*Akbari Begam v. Wilayat Ali*, I. L. R., 2 All. 908.

AS THE Limitation Act (XV. of 1877) shortens the period of limitation in the case of promissory notes payable on demand, the period of limitation in respect of such notes executed prior to 1st October, 1877, is governed by the provisions of s. 2 of

the Act. When a Court of first instance, after taking evidence, dismisses a suit upon a preliminary objection without giving a decision upon the merits of the case, and the decree is reversed on appeal, the Court of Appeal, if it considers the evidence on record sufficient, may decide the case, and is not bound to remand it for trial under s. 562 of the Civil Procedure Code.—*Bandi Subbayya (Defendant), Appellant, v. Madalapalli Subanna (Plaintiff), Respondent*, I. L. R., 3 Mad. 96.

IN A suit for negligence, where it is possible that the Court may take one or more different views as to the proper measure of damages, the plaintiff must come prepared with evidence as to the amount of damages according to whichever view the Court may adopt: and if the evidence produced is applicable to one view only, the Court cannot give the plaintiff a retrial, and allow him to remodel his case with fresh evidence under Act X. of 1877, s. 566. That section is intended to provide for cases where some point has come to light in the Appellate Court, which has not been raised, or the importance of which has not occurred to the parties or to the Judge in the Court below.—*Anundolall Doss v. Boycaunt Ram Roy*, I. L. R., 5 Cal. 283.

THE plaintiff sued to recover from the defendant Rs. 71-3-3, alleging that the defendant had illegally levied the money on the plaintiff's land on account of enhanced summary settlement and local-fund cess. The defendant, being a minor, was represented by the Collector as his administrator. The Assistant Judge who tried the suit awarded the plaintiff's claim. The District Judge in appeal reduced the amount of the plaintiff's claim to Rs. 38-4-9, but upheld the decree of the first Court in other respects. The defendant thereupon filed a second appeal in the High Court. *Held* that under the Civil Procedure Code (Act X. of 1877), s. 566, no second appeal lay, as the suit was one cognizable by a Small Cause Court. Act X. of 1876, s. 15, removes suits to which the Collector is a party from the jurisdiction of the Small Cause Court; but the nature of the suit remains unaltered.—*Musa Miya Saheb v. Sayad Gulam Husein*, I. L. R., 7 Bom. 100.

H SUE D B for arrears of rent, alleging that the annual rent payable by the latter was Rs. 212-1-0. The Court of first instance gave H a decree based on the finding that the annual rent payable by B was Rs. 94. H appealed, and the lower Appellate Court gave him a decree based on the finding that the annual rent payable by B was Rs. 128-12-0. B appealed to the High Court from the lower Appellate Court's decree. H did not appeal from that decree, neither did he take any objections thereto under s. 561 of Act X. of 1877. Stuart, C.J., and Oldfield, J., before whom such appeal came on for hearing, remanded the case to the lower Appellate Court for a fresh determination of the question as to the amount of the annual rent payable by B. The lower Appellate Court then found that the annual rent payable by B was Rs. 212-1-0. *Held* by Stuart, C.J. (Oldfield, J., dissenting), that such second finding of the lower Appellate Court should be accepted, and the amount awarded by its decree be enlarged accordingly, notwithstanding H had not appealed from that decree, or preferred objections thereto.—*Bikramajit Singh (Defendant) v. Husaini Begam (Plaintiff)*, I. L. R., 3 All. 643.

567. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to the finding.

Finding and evidence to be put on record.
Objections to finding.

After the expiration of the period fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

Determination of appeal.

WHERE a first Appellate Court has remanded a case to the Court of first instance for the trial of issues, and where, on the return of the findings on these issues, no objections have been preferred under s. 567 of the Civil Procedure Code, the Appellate Court, after the period fixed for presenting objections, may, at its discretion, receive or decline to receive any written objection, but is, in any case, bound to consider the findings of the lower Court on the merits, and is not precluded from hearing arguments for and against the findings at the hearing of the

appeal. *Akbari Begam v. Wilayat Ali* (I. L. R., 2 All. 908) followed. The imperative provisions of s. 574 of the Civil Procedure Code apply alike to cases remanded by the first Appellate Court for the trial of issues and to those in which no such remand has taken place.—*Umed Ali v. Salima Bibi*, I. L. R., 6 All. 383.

WHERE a first Appellate Court has remanded a case to the Court of first instance for the trial of issues, and where, on the return of findings on these issues, objections under s. 567 of the Civil Procedure Code have not been filed until after the expiration of the prescribed period, the Appellate Court, though not bound to entertain the objections should, nevertheless, upon the hearing of the remand, allow the party filing them to be heard with regard to them. *Ratan Singh v. Wazir* (I. L. R., 1 All. 165) and *Akbari Begam v. Wilayat Ali* (I. L. R., 2 All. 908) referred to. An Appellate Court, because it remands issues, does not therefore, in the absence of subsequent objection by either or both of the parties to the findings when returned, divest itself of its power to exercise its judicial mind as to the propriety of such findings; but, apart from any objection by the parties, it should examine and test them to see whether or not they ought to be accepted. *Akbari Begam v. Wilayat Ali* (I. L. R., 2 All. 908) followed. *Umed Ali v. Salima Bibi* (I. L. R., 6 All. 383) referred to.—*Mumtaz Begam v. Fateh Husain*, I. L. R., 6 All. 391.

533. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced for any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

569. Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence, or direct the Court against whose decree the appeal is made, or any other subordinate Court, to take such evidence, and to send it, when taken, to the Appellate Court.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Of the Judgment in Appeal.

571. The Appellate Court, after hearing the parties or their pleaders, and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

572. The judgment shall be written in English; provided that, if English is not the mother-tongue of the Judge, Language of judgment. and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, Translation of judgment. if any party so require, be translated into such language, and the translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

574. The judgment of the Appellate Court shall state—
 Contents of judgment. (a) the points for determination;
 (b) the decision thereupon;
 (c) the reasons for the decision; and,
 (d) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled;
 and shall, at the time that it is pronounced, be signed and dated by the Judge or by the Judges concurring therein.
 Date and signature.

THE order of adjudication made under s. 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment.—*Royal Reddi (Second Plaintiff), Appellant, v. Linga Reddi (Defendant), I. L. R., 3 Mad. 1.*

WHERE the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons, or, in the event of his absence, refer the questions to his successor for fresh trial.—*Assanullah v. Hafiz Mahomed Ali, I. L. R., 10 Cal. 932.*

575. When the appeal is heard by a Bench of two or more Judges, Decision when appeal heard by two or more Judges. the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that, if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may, from time to time, make rules consistent with this Code to regulate references under this section.

THE provisions of the Letters Patent of 1865, cl. 36, that when the Judges of a Division Bench are equally divided in opinion, the opinion of the Senior Judge shall prevail, has been superseded by Act X. of 1877, s. 575 (which is extended to

miscellaneous proceedings of the nature of appeals by s. 647 of that Act), so far as regards cases to which s. 575 is applicable.—*Appaji Bhivráv v. Shivról Khubchand*, I. L. R., 3 Bom. 204 (F.B.).

S. 575 of Act XIV. of 1882 does not take away the right of appeal which is given by cl. 15 of the Letters Patent. When the judgment of a lower Court has been confirmed under s. 575 of the Code of Civil Procedure by reason of one of the Judges of the Appeal Court agreeing upon the facts with the Court below, an appeal will lie against such judgment, notwithstanding the terms of s. 575.—*Appaji Bhivráv v. Shivról Khubchand* (I. L. R., 3 Bom. 204) approved.—*Gossami Sri 108. Sri Gidhariji Maharaj Tickait v. Purushottam Gossami*, I. L. R., 10 Cal. 814.

THE only Bench which can legally deal with an appeal which has been referred under the provisions of s. 575 of the Civil Procedure Code is one which includes the Judges who first heard the appeal, and whose difference in opinion on a point of law necessitated the reference *Khelut Chunder Ghose v. Tara Churn Koondo Chowdury* (6 W. R. 269), *Mahomed Akil v. Asad-un-nissa Bibi* (5 Wyman's Rep. 69), and *Brand v. Hammersmith and City Railway Company* (36 L. J., Q. B. 137) referred to. The word "judgment" as used in Rule II. of the Rules made by the High Court, North-Western Provinces, to regulate references under s. 575 of the Civil Procedure Code, must not be understood in its strict sense, but merely as an expression of opinion containing reasons for a contemplated or proposed judgment.—*Rohilkhand and Kumaon Bank, Limited, v. Row*, I. L. R., 6 All. 468.

576. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

577. The judgment may be for confirming, varying, or reversing the decree against which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

M SUEB K and J to enforce a right of pre-emption in respect of property which he alleged *K* had sold to *J*. *K* denied that she had sold such property to *J*. *J* set up as a defence that *M* had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. *J* appealed, making *M* and *K* respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. *J* then appealed to the High Court, making *K* the respondent. *Held* that neither the appeal from the original decree in the suit, nor the appeal from the appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—*Jumna Singh and another (Defendants) v. Kamar-un-nisa (Plaintiff)*, I. L. R., 3 AH. 152 (F.B.).

578. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal, on account of any error, defect, or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

THE refusal of a plaintiff-respondent to make good a deficiency in court-fees in respect of his plaint when called upon to do so by the Appellate Court is not a

ground upon which the Appellate Court should reverse the decree of the Court of first instance and dismiss the suit.—Mehdi Husain (Plaintiff) *v.* Madar Bakhish and others (Defendants), I. L. R., 2 All. 889.

A SUIT was instituted and tried on the merits in the Court of a Subordinate Judge without any objection being taken, either by the defendants or by the Court, that the plaint was insufficiently stamped. The defendants appealed on the merits, and the District Judge, being of opinion that the stamp on the plaint was inadequate, called upon the plaintiff to pay the additional fee which would have been payable had the objection been taken and the question rightly decided in the Court of first instance. *Held*, on second appeal, that the order of the Judge was properly made under s. 12, cl. ii. of the Court Fees' Act, VII. of 1870.—Shama Soondary *v.* Hurro Soondary, I. L. R., 7 Cal. 348.

THE plaintiffs in this suit, alleging that they were co-sharers of a certain village, that certain land situate in such village was the property of the co-sharers, and that such land had been improperly sold by the persons occupying it to one of the co-sharers, sued the vendors and the purchaser and the other co-sharers for possession of their share of such land and the setting aside of the sale so far as their share was concerned, and valued the suit according to their share. *Held* that the error in the frame and valuation of the suit, inasmuch as it did not affect the jurisdiction of the Court in which the suit was instituted or the merits of the case, was not, under s. 578 of the Civil Procedure Code, a ground on which the Appellate Court should have reversed the decree of the Court of first instance.—Unnoda Persad Roy *v.* Erskine (12 B. L. R. 370) distinguished.—Param and others *v.* Achal, I. L. R., 4 All. 289.

SUIT by payee against drawer upon a hundi drawn in British India upon a person at Colombo. The hundi was not stamped when drawn. Objection taken to its admission in evidence by defendant was allowed by the Munsif, but plaintiff was permitted to sue for the amount due upon the original consideration. The suit was dismissed on the ground that no consideration was proved. Upon appeal the District Judge held that the hundi did not require a stamp as it was not intended to operate in British India, and admitted the hundi in evidence as a business letter admitting responsibility, and found that there was consideration. *Held* upon second appeal that the hundi having been admitted in evidence, though contrary to law, by the District Judge, no objection could be taken to the decree in second appeal upon that account.—Rámásami Chetti (Defendant), Appellant, *v.* Rámásami Chetti and another (Plaintiffs), Respondents, I. L. R., 5 Mad. 220.

A MAHOMEDAN residing at Zanzibar let a house situated there to the defendant, to be held by the latter as long as he pleased, under a lease in which he (the lessor) stipulated never to remove the lessee. The plaintiff subsequently, with full knowledge of the lease, purchased the same house from the lessor, and as such purchaser sued to eject the defendant. The plaintiff tendered evidence to show that by the custom of Zanzibar the defendant's tenancy was determined upon the sale by the landlord. This evidence was refused. *Held* that the alleged custom, even if proved, was invalid. It was unreasonable, as enabling a man, after having granted a lease, to deprive the lessee of the entire benefit of his lease. The exclusion of evidence in the lower Court is not sufficient ground for reversing that Court's decree, unless the Appeal Court comes to the conclusion that the evidence refused, if it had been received, ought to have varied the decision.—C. R. DeSouza *v.* Pestanjji, I. L. R., 8 Bom. 408.

IN A suit to recover possession of certain immoveable property alleged to have been purchased by the plaintiff from a Hindú widow, who claimed to have held the same as heir of her husband, the defendant, who was the mother of the husband, contended, *inter alia*, that the alleged purchase and sale were invalid, by reason that she herself was entitled to maintenance out of the property. The first Court gave the plaintiff a decree, and this decree was affirmed on appeal by the District Judge, who, however, gave no reason of his own for his judgment, but merely adopted those of the lower Court. *Held* that, having regard to the nature of the case and the simplicity of the point for determination, the fact of the District Judge having omitted to state his reasons did not amount to such an error of law within the

meaning of s. 578 of the Code of Civil Procedure as affected the merits of the case or the jurisdiction of the Court.—Rohimoni Dabi (one of the Defendants), Appellant, and Zamir-un-din and others (Plaintiffs), Respondents, 8 Cal. Law Rep 597.

THE sons of R and of K and of S possessed proprietary rights in two maháls of a certain mauza. P possessed proprietary rights in one of those maháls. In April, 1879, the sons of R sold their proprietary rights in both maháls to G. In August, 1879, the sons of K sold their proprietary rights in both maháls to G. Later in the same month the sons of S sold their proprietary rights in both maháls to N. G sued N to enforce a right of pre-emption in respect of the sale to the latter, and obtained a decree. P then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the mahál of which he was a co-sharer, joining as defendants G and N and the vendors to them. G alone objected in the Court of first instance to the frame of the suit. That Court overruled the objection, and gave P a decree. The lower Appellate Court reversed this decree on the ground of misjoinder. *Held* that in respect of G there was no misjoinder, but that in respect of the other defendants there was misjoinder of both causes of action and parties. Inasmuch as, however, G alone objected to the frame of the suit, and the defect did not affect the merits of the case or the jurisdiction of the Court, the lower Appellate Court ought not, regard being had to s. 578 of Act X. of 1877, to have reversed the decree of the Court of first instance by reason of such defect.—Kalian Singh (Plaintiff) v. Gur Dayal (Defendant), I. L. R., 4 All. 163.

IN June, 1875, L executed a bond in favour of S, in which he mortgaged, amongst other property, a village called *Chand Khera* as security for the payment of certain moneys. He subsequently sold such village to A, concealing the fact that it had been mortgaged to S. On this fact coming to the knowledge of A, he threatened L with a criminal prosecution, whereupon L proposed to S, in writing, that the security of a share in a village called *Kelsa*, which he alleged was his property, should be substituted for the security of *Chand Khera*. S accepted this proposal by a letter in which he referred to L's proposal in terms. It subsequently appeared that the share in *Kelsa* did not belong to L, but to another person. S having sued upon his bond, claiming to enforce thereunder a lien upon *Chand Khera*, A set up as a defence to the suit that S had agreed to substitute *Kelsa* for *Chand Khera* in the bond, producing S's letter as evidence of the agreement. *Held* that such letter operated as a release, and should therefore have been stamped and registered. *Held* also that an objection may properly be taken in a Court of first appeal to an unstamped document, and such Court is bound to entertain the objection, and may direct that the document be stamped and the penalty imposed. *Held* also that L's fraud vitiated S's agreement to substitute the security of *Kelsa* for the security of *Chand Khera* in the bond, and S was entitled, notwithstanding A might have purchased the latter property in good faith, to the enforcement of the lien created thereon by the bond. Mark Ridded Currie v. S V. Muttu Ramen Chetty (3 B. L. R. 126) discussed.—Safdar Ali Khan (Plaintiff) v. Lachman Dass and others (Defendants), I. L. R., 2 All. 554.

THE defendants in a suit on a bond admitted the execution of the bond, but denied that they had received, as the bond recited they had, at the time of its execution, the consideration for it. The Court of first instance, instead of calling on the defendants to establish the fact that they had not received the consideration for the bond, as it ought to have done under the circumstances, irregularly allowed the plaintiff to produce witnesses to prove that the consideration for the bond had been paid at the time of its execution. The evidence of these witnesses proved that the consideration of the bond had not been paid at the time of execution, and that, if it had been paid at all, it had been paid at some subsequent time. The plaintiff did not give any further evidence to establish such payment, and the Court of first instance, without calling on the defendants to establish their defence, dismissed the suit. The lower Appellate Court held that the defendants should have been required to begin under the circumstances, and reversed the decree of the Court of first instance, and gave the plaintiff a decree. *Held* that, although the plaintiff ought not to have begun, yet as he had done so, and his witnesses had proved that the consideration for the bond had not been paid as admitted in the bond, a new case was opened up, in which the *onus* was shifted back to the plaintiff to establish that he had, not at the

time alleged in the bond, but at some subsequent time, paid to the defendants the consideration for the bond. Also that it was doubtful, having regard to the provisions of s 578 of Act X. of 1877, whether it was competent for the lower Appellate Court to reverse the decision of the Court of first instance; but even if it were, the lower Appellate Court should not have ignored what had taken place, but should have dealt with the case in appeal in the shape it came before it.—*Makund and others (Defendants) v. Bahori Lal (Plaintiff)*, I. L. R., 3 All. 824.

Of the Decree in Appeal.

Date and contents of decree.

579. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it :

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Judge dissenting from judgment need not sign decree.

THE order of adjudication made under s. 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment.—*Royal Reddi (Second Plaintiff), Appellant, v. Linga Reddi (Defendant), Respondent*, I. L. R., 3 Mad. 1.

Copies of judgment and decree to be furnished to parties.

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Certified copy of decree to be sent to Court whose decree appealed against.

582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform, as nearly as may be, the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V.; and in Chapter XXI., so far as may be, the words "plaintiff," "defendant," and "suit," shall be held to include an appellant, a respondent, and an appeal, respectively, in proceedings arising out of the death, marriage, or insolvency of parties to an appeal.

Appellate Court to have same powers as Courts of original jurisdiction.

The provisions hereinbefore contained shall apply to appeals under this chapter, so far as such provisions are applicable.

UNDER s. 582 of the Civil Procedure Code, a Court of Appeal has the power, with the consent of the parties, of referring to arbitration matters in dispute in an appeal. *Jaggessar Dev v. K. M. Dassee* (12 B. L. R. 266) dissented from.—*Sangaralinam Pillai* (Plaintiff). Petitioner, I. L. R., 3 Mad. 78.

Per MITTER, J. (Garth, C.J., *dubitante*).—Notwithstanding that s. 582, Civil Procedure Code, does not expressly direct that the word “plaintiff” occurring in s. 366 shall be held to include an “appellant,” yet the power conferred by s. 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff may, by analogy, be taken to be conferred on the Appellate Court. *Lakshmibai v. Balkrishna* (I. L. R., 4 Bom. 654) followed.—*Rajmonee Dabee v. Chunder Kant Sandel*, I. L. R., 8 Cal. 440.

583. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in suits.

CHAPTER XLII.

OF APPEALS FROM APPELLATE DECREES.

584. Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely)—

Grounds of second appeal. (a) the decision being contrary to some specified law or usage having the force of law ;

(b) the decision having failed to determine some material issue of law or usage having the force of law ;

(c) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

A DEFENDANT who obtains a judgment in his favour in the Court of first instance, and who, on appeal by the plaintiff, does not appear at the hearing of the appeal, or present a petition for a re-hearing, may, under Act X. of 1877, s. 584, present a second appeal against the decree of the lower Appellate Court.—*Modalatha ex parte*, I. L. R., 2 Mad. 75.

AN APPELLANT, who has obtained a decree setting aside the decision of the Court of first instance, is not entitled to a further appeal to the High Court, on the ground that he is dissatisfied with some of the findings recorded in the judgment of the lower Appellate Court, an appeal from an appellate decree under s. 584 being strictly restricted to matters contained in the decree alone.—*Koylash Chunder Koosari v. Ram Lall Nag*, I. L. R., 6 Cal. 206.

AN ORDER on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—*Collector of Bijnor, Manager of the estate of Chaudhri Ranjit Singh, a Minor (Defendant), v. Jafar Ali Khan* (Plaintiff), I. L. R., 3 All. 18.

WHERE the lower Appellate Court has clearly misapprehended what the evidence before it was, and has thus been led to discard or not give sufficient weight to important evidence, and to give weight to other evidence to which it is not entitled, and has thus been led, not into any mere incidental mistake, but totally to misconceive the case, the High Court will interfere in second appeal, though it is not the ordinary course of procedure for it to interfere in such cases with any findings of fact which have been arrived at by the lower Appellate Court. In a suit on a mortgage-bond the plaintiff's are entitled to recover the agreed rate of interest without any deduction.—*Futtehma Begum and others v. Mohamed Ausur*, I. L. R., 9 Cal. 309.

A SUIT to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court. After the suit had been admitted, and the parties called on to produce evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court, on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in the suit being beyond the jurisdiction of a Munsif. *Held* that, under Act VIII. of 1859, the Munsif's order was appealable to the lower Appellate Court, and, under Act X. of 1877, the lower Appellate Court's order to the High Court. Where the question in dispute in such a suit is not only whether the property has been redeemed out of the usufruct, but whether the property and the right to redeem belongs to the plaintiff, and the value of the property exceeds Rs. 1,000, such suit is not cognizable by a Munsif—*Kalian Dass and others (Plaintiffs) v. Nawal Singh and others (Defendants)*, I. L. R., 1 All. 620.

M SUED K and J to enforce a right of pre-emption in respect of property which he alleged K had sold to J. K denied that she had sold such property to J. J set up as a defence that M had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. J appealed, making M and K respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. J then appealed to the High Court, making K the respondent. *Held* that neither the appeal from the original decree in the suit, nor the appeal from the appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—*Jumna Singh and another (Defendants) v. Kamar-un-nisa (Plaintiff)*, I. L. R., 3 All. 152 (F.B.).

THE holder of a decree for money applied for the attachment, in the execution of decree, of certain monies deposited in Court to the credit of the judgment-debtor. On 4th June, 1877, the Court of first instance refused the attachment on the ground that the decree directed the sale of certain immoveable property for its satisfaction, and awarded no other relief. The order of the Court of first instance was affirmed by the lower Appellate Court on the 4th August, 1877. Act X. of 1877, repealing Act VIII. of 1859 and Act XXIII. of 1861, came into force on 1st October, 1877. On 13th November, 1877, the decree-holder applied to the High Court for the admission of a second appeal from the order of the lower Appellate Court, on the ground that the decree had been misconstrued. *Held* that an appeal under the repealed Act VIII. of 1859 was admissible under Act I. of 1863, s. 6, and that the order of the lower Appellate Court was also appealable under Act X. of 1877, s. 584.—*Thakur Prasad v. Ashan Ali*, I. L. R., 1 All. 668 (F.B.). See also I. L. R., 3 Cal. 662 (F.B.), and preceding case, and I. L. R., 2 All. 91; I. L. R., 5 Cal. 259. But see I. L. R., 2 All. 74.

WHEN the decree of a subordinate Court is under appeal to the High Court, it is open to the High Court to vary it, either in points in which it is erroneous, or in respect of matters occurring subsequently to the date of such decree which are admitted. The plaintiff obtained a decree in a partition-suit in the Subordinate Judge's Court for his share in certain joint family-property in the possession of the defendants (his co-parceners). The decree was affirmed on appeal. The defendants filed a second appeal in the High Court; but before it was decided, one of the defendants died. The plaintiff, at the hearing of the second appeal, claimed a larger share in

the family-property than he had been awarded by the decree of the Courts below. *Held* that the (plaintiff) was entitled to a share in that of the co-parcener who died *pendente lite*, and that the decree appealed from ought to be varied accordingly. Joy Narain Giri v. Girish Chunder Myte (I. L. R., 4 Cal. 434) distinguished. A decree for partition does not operate as a severance so long as it remains under appeal.—Sakharam Mahadev Dange (Original Defendant). Appellant, v. Hari Krishna Dange (Original Plaintiff), Respondent, I. L. R., 6 Bom. 113.

Second appeal on no other grounds 585. No second appeal shall lie except on the grounds mentioned in section 584.

586. No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

THE right of appeal given by ss. 588 and 589 of Act X. of 1877 from an order of remand, as contemplated by s. 562, is not taken away by s. 586. Chandni Ranjit Singh v. Jafar Ali Khan (I. L. R., 3 All. 18) followed.—Mahadev Narsinh v. Ragho Keshav, I. L. R., 7 Bom. 292.

IN APPLICATIONS for review of judgments of Courts of Small Causes constituted under Act XI. of 1865, the procedure laid down in the rules contained in chap. xlii. of the Code of Civil Procedure (Act X. of 1877) is to be strictly followed, without reference to the procedure relating to new trials under s. 21 of Act XI. of 1865.—Ishu Chunder Banerjee v. Lochun Gope, 5 Cal. Law Rep. 559.

A SUIT for money due on a contract within the meaning of Act XI. of 1865, s. 6, is none the less cognizable by a Small Cause Court, because it may be necessary to go into the accounts of both parties to see whether the amount claimed is really due or not. I. L. R., 1 Cal. 123 (24 W. R. 478). And therefore no second appeal lies in such a suit under Act X. of 1877, s. 586.—Asnan Singh v. Doorga Roy, I. L. R., 6 Cal. 284.

AN ORDER on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—The Collector of Bijoor, Manager of the estate of Chandni Ranjit Singh, a Minor (Defendant), v. Jafar Ali Khan (Plaintiff), I. L. R., 3 All. 18.

A SUIT by one decree-holder against another for the money received by the latter on a division between them of the proceeds of an execution-sale as his share of such proceeds, under the order of the Court executing the decree, is a suit of the nature cognizable in a Court of Small Causes, and consequently, where the amount of such money does not exceed five hundred rupees, no second appeal lies in such suit.—Mata Pershad (Defendant) v. Gauri (Plaintiff), I. L. R., 3 All. 59.

A SUIT by a landholder against a tenant for Rs. 130, being the value of a moiety of the produce of a grove of mango trees held by such tenant, such amount being claimed in value of an agreement recorded in the *wajib-ul-arz*, and not in virtue of any custom or right, is not cognizable in the Revenue Court, but is cognizable in a Court of Small Causes, and consequently no second appeal in the suit will lie.—Sarnam Tewari and another (Defendant) v. Sakina Bibi (Plaintiff), I. L. R., 3 All. 37.

THE plaintiff sued to recover from the defendant Rs. 71-3-3, alleging that the defendant had illegally levied the money on the plaintiff's land on account of enhanced summary settlement and local-fund cess. The defendant, being a minor, was represented by the Collector as his administrator. The Assistant Judge who tried the suit awarded the plaintiff's claim. The District Judge, in appeal, reduced the amount of the plaintiff's claim to Rs. 38-4-9, but upheld the decree of the first Court in other respects. The defendant thereupon filed a second appeal in the High Court. *Held* that under the Civil Procedure Code (Act X. of 1877), s. 586, no second appeal lay, as the suit was one cognizable by a Small Cause Court. Act X. of 1876, s. 15, removes suits to which the Collector is a party from the jurisdiction of the Small Cause Court; but the nature of the suit remains unaltered.—Musá Miyá Sahab v. Sayad Gulám Husein, I. L. R., 7 Bom. 100.

ON THE death of K a dispute arose among her heirs as to the succession to the share of which she was the recorded proprietor. In January, 1874, V, who was not one of her heirs, and who was not a shareholder of such village, was recorded in the revenue-register as lambardár in respect of her share, and was so recorded until February, 1878, when his name was expunged, and the name of B, who was one of the heirs, was recorded as the proprietor of such share. N subsequently sued B to recover Rs. 70-13-4, being the amount which he had paid on account of revenue in respect of such share during the period between January, 1874, and February, 1878, instituting such suit in a Civil Court (Munsif). *Held* that the suit was not one cognizable in a Revenue Court under s. 93 (g) of Act XVIII. of 1873, but one cognizable in a Civil Court. *Held* also that the suit was one for damages under s. 70 of Act IX. of 1872, within the meaning of s. 6 of Act XI. of 1865, and accordingly of the nature cognizable in a Court of Small Causes, and no second appeal in the suit would lie.—Nath Prasad (Plaintiff) v. Baij Nath (Defendant), I. L. R., 3 All. 66.

A was the proprietor of nine annas of a mouza, B and his family of one anna, and C and others of the remaining six annas. B and his family having occupied and enjoyed, to the exclusion of their co-shareholders, fifty-four bighás of the mouza, failed to pay any rent in respect of such occupation. A instituted a suit against them (making C and the other holders of the six annas share defendants to the suit) to recover the sum of Rs. 412-8 as the sum justly due to him after making all proper deductions, including as well as the share of the rent of the forty-four bighás to which the six-anna shareholders were entitled to retain as proprietors of a one-anna share. *Held* that the facts showed an implied contract on the part of B and his family to pay to their co-shareholders whatever, upon taking an account, should appear to be due to them; and that, inasmuch as the total amount sought to be recovered in the suit by A did not exceed 500 rupees, the suit was one which might have been brought in a Small Cause Court, and therefore the plaintiff had no right of second appeal to the High Court under s. 586 of the Code of Civil Procedure.—Asman Singh v. Doorga Roy, I. L. R., 6 Cal. 284.

THE jurisdiction of a Small Cause Court is not ousted in a suit for damages for carrying away the produce of certain land when the defendant sets up title to the land in answer to the claim. S. 586 of the Code of Civil Procedure precludes a second appeal in a suit for damages under Rs. 500, although the suit has been instituted in the District Munsif's Court and not in a Court of Small Causes, and although a question of title has been raised by the defendant and decided. *Per* Turner, C.J.—When a suit is brought in a form in which it is cognizable by a Small Cause Court under Act XI. of 1865, the Court cannot decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances, the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. *Per* Muttusámi Ayyár, J.—The question, what is a suit of the nature cognizable in Courts of Small Causes within the meaning of s. 586 of the Civil Procedure Code, has reference to the mode of adjudication and not to the *forum*, and the fact that the suit is instituted in the District Munsif's Court and not in a Court of summary jurisdiction makes no difference for the purposes of that section. If the matter adjudicated on in a suit is only incidentally in issue or cognizable, the adjudication is final, whether by a Court of concurrent or limited jurisdiction, only for the purpose and object of that suit. *Per* Innes, J.—The decree of a Small Cause Court in a case where a question of title is raised incidentally is no bar to a suit upon the title under s. 13, expl. 2, of the Civil Procedure Code, because the Small Cause Court is not competent to pass a decree upon the title.—Manappa Mudali (Plaintiff), Appellant, v. S. T. McCarthy (First Defendant), Respondent, I. L. R., 3 Mad. 192.

587. The provisions contained in Chapter XLI. shall apply, as far

Provisions as to second appeal.	as may be, to appeals under this chapter, and to the execution of decrees passed in such appeals.
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WHERE the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons, or, in the event of his absence, refer the questions to his successor for fresh trial.—Assanullah v. Hafiz Mahomed Ali, I. L. R., 10 Cal. 932.

CHAPTER XLIII.

OF APPEALS FROM ORDERS.

Orders appealable.

588. An appeal shall lie from the following orders under this Code, and from no other such orders:—

- (1) orders under section 20, staying proceedings in a suit;
- (2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;
- (3) orders under section 36, or section 66, directing that a party shall appear in person;
- (4) orders under section 44, adding a cause of action;
- (5) orders under section 47, excluding a cause of action;
- (6) orders returning plaints for amendment or to be presented to the proper Court;
- (7) orders under section 111, setting-off, or refusing to set-off, one debt against another;
- (8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;
- (9) orders rejecting applications under section 108, or an order to set aside a decree *ex parte*;
- (10) orders under sections 113, 120, and 177;
- (11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees;
- (12) orders under sections 143 and 145, directing anything to be impounded;
- (13) orders under section 162, for the attachment and sale of moveable property;
- (14) orders under section 168, for attachment of property, and orders under section 170, for the sale of attached property;
- (15) orders under section 261, as to objections to draft-conveyances or draft-endorsements;
- (16) orders under section 294, the first paragraph of section 312, or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property;
- (17) orders in insolvency-matters, under section 351, section 352, section 353, or section 357;
- (18) orders under section 366, paragraph two, section 367, or section 368;
- (18) orders rejecting applications under section 370 for dismissal of a suit;
- (20) orders under section 371, refusing to set aside the abatement or dismissal of a suit;
- (21) orders disallowing objections under section 372;
- (22) orders under section 454, section 455, or section 458, directing a next friend or guardian for the suit to pay costs;
- (23) orders in interpleader-suits under section 473, clause (a), (b), or (d), section 475, or section 476;

(24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502, or section 503;

(25) orders under section 514, superseding an arbitration;

(26) orders under section 518, modifying an award;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal;

(28) orders under section 562, remanding a case;

(29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

AN APPEAL lies against an order rejecting a plaint on the ground of its being insufficiently stamped.—*Ajoodhya Pershad v. Gunga Pershad*, 1 L. R., 6 Cal. 249.

AN ORDER refusing an application, under s. 32 of Act X. of 1877, by a person to be added as a defendant in a suit, is not appealable.—*Karman Bibi and others (Petitioners) v. Misri Lal (Plaintiff)*, 1 L. R., 2 All. 904.

WHERE an appeal is dismissed, under s. 556 of Act X. of 1877, for the appellant's default, the order dismissing it is not appealable.—*Nand Ram and others (Defendants) v. Muhammad Bakhsh (Plaintiff)*, 1 L. R., 2 All. 616.

S. 588, Act X. of 1877, restricting appeals against orders, does not apply to prevent an appeal to the High Court from the order of a Judge of that Court.—*Hurriah Chuander Chowdhry v. Kalisunderi Debi*, 1 L. R., 9 Cal. 482.

THE right of appeal given by ss. 588 and 589 of Act X. of 1877 from an order of remand, as contemplated by s. 562, is not taken away by s. 586.—*Chandhri Ranjit Singh v. Jafar Ali Khan* (1 L. R., 3 All. 18) followed.—*Mahadev Nainsinh v. Ragho Keshav*, 1 L. R., 7 Bom. 292.

WHERE a suit has been referred to arbitration by an order of Court, and the Court afterwards gives judgment according to the award made upon such reference, such judgment is final, and no appeal lies therefrom.—1 May 366 (Marshall 163). 14 W. R. 33, 17 W. R. 30, (P. C.) 23 W. R. 429. See 15 W. R., F. B., 9.

AN ORDER under s. 97 of the Civil Procedure Code, dismissing a suit, on its being found that the summons has not been served on the defendant, in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, is not appealable.—*Lucky Churn Chowdhry v. Budurrunnissa*, 1 L. R., 9 Cal. 627.

ALTHOUGH the auction-purchaser may not apply under Act X. of 1877, s. 311, to have a sale set aside, he may be a party to the proceedings after an application has been made under that section, and then, if an order is made against him, he can appeal from such order under s. 588.—*Kanthi Ram v. Bankey Lal*, 1 L. R., 2 All. 396.

A PERSON applying under Act X. of 1877, s. 344, must satisfy the Court that his case comes within the provisions of s. 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under s. 588.—*Muniraz Hossein v. Brij Mohun Thakoor*, 1 L. R., 4 Cal. 888. Followed in 1 L. R., 6 Cal. 168.

AN ORDER made by a lower Court, directing a suit to be re-admitted and registered on the file of the Court, is not appealable. Second appeals to the High Court must either come within chap. xlii. or ss. 588 and 591 of Act X. of 1877.—*Hirdhamun Jha and others (Defendants) v. Jinghoor Jha and others (Plaintiffs)*, 1 L. R., 5 Cal. 711.

AN ORDER refusing to grant an application to be made an insolvent is appealable under cl. 17, s. 588 of the Code of Civil Procedure; such an order must be considered to be one made under s. 351. *Juggutjeebun Goopto v. Haroomar Pal* (1 L. R., 5 Cal. 719) dissented from.—*Nabi Bakhsh (Judgment-debtor) v. Chasni (Decree-holder)*, 1 L. R., 6 Cal. 168.

THERE is no appeal from an order made under Act X. of 1877, s. 351, refusing to grant an application to be made an insolvent. The appeal allowed under s. 585, cl. 17, so far as an order under s. 351 is concerned, is on behalf of the judgment-creditor only.—*Jaggutjeebun Gooptoo v. Haro Coomar Pal*, I. L. R., 5 Cal. 719. Dissented from in I. L. R., 6 Cal. 168.

AFTER a decree had been made *ex parte*, the defendant applied to have it set aside. The Subordinate Judge refused the application, but his order was reversed by the District Judge. *Held* that the order of the District Judge was final under s. 588, and that no second appeal would lie; nor would the Court interfere under s. 622 of the Code.—*Aubinash Chunder Mookerjee v. Martin*, I. L. R., 8 Cal. 832.

MATTERS in dispute were referred to arbitration without the intervention of the Court. An award was made, and upon an application under s. 525 of the Civil Procedure Code to file the award, one of the parties showed cause why the award should not be filed, and the Subordinate Judge held the objection to be good. *Held* that no appeal lay.—*Sree Ram Chaudhry (Petitioner) v. Denobundhoo Chaudhry (Opposite Party)*, I. L. R., 7 Cal. 490.

AN ORDER on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—*The Collector of Bijnor, Manager of the estate of Chandhri Ranjit Singh, a Minor (Defendant), v. Jafar Ali Khan (Plaintiff)*, I. L. R., 3 All. 18.

WHERE, in a suit for the filing of an award made on a private reference to arbitration, the Court of first instance, holding that there was no reason to remit such award to the re-consideration of the arbitrator under the provisions of s. 520 of Act X. of 1877, or to set it aside under s. 521 of that Act, did not proceed to give judgment according to such award followed by a decree, but merely directed that such award should be filed. *Held* that its order was not appealable as a decree, or as an order.—*Ramadhin and another (Defendants) v. Mahesh and another (Plaintiffs)*, I. L. R., 2 All. 471.

A DECISION of a Judge directing a penalty to be enforced under the Stamp Act, the case being afterwards proceeded with, is not appealable as a decree, as it cannot be said to be a decree affecting the merits of the case or the jurisdiction of the Court. Nor can such a decision be said to be "an order as to a fine" within the meaning of Act VIII. of 1859, s. 365 (corresponding with Act X. of 1877, s. 588, cl. 29), which is not intended to apply to penalties under the Stamp Act, but only to fines which may be levied under the Code itself.—*Sonaka Chowdrain v. Bhoobunjoy Shaha*, I. L. R., 5 Cal. 311.

AN ORDER for attachment and sale of property in execution of a decree is an order "of the same nature with" an order made in the course of a suit for attachment of the debtor's property. The latter order is appealable under s. 588, cl. r, of the Code of Civil Procedure. It follows that an order for attachment and sale in execution of a decree is (according to the requirement of s. 588, cl. j) "of the same nature with appealable orders made in the course of a suit," and therefore is appealable under that section.—*Palakdhari Rai and others (Judgment-debtors) v. Radha Persad Singh (Decree-holder)*, I. L. R., 8 Cal. 28.

AN APPELLATE Court rejected the application of the legal representative of a deceased sole plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the Appellate Court, passed under the first paragraph of s. 366 of Act X. of 1877, not being appealable under cl. 18, s. 588, of that Act, nor being a decree within the terms of s. 2, from which a second appeal would lie, was not appealable.—*Ahmad Ata (Plaintiff) v. Muta Badal Lal (Defendant)*, I. L. R., 3 All. 844.

AN ORDER made by a Subordinate Judge, dismissing an application under s. 503 for the appointment of a receiver in a suit pending before him, or declining to nominate a receiver, is an order under that section, and not under s. 505, and is therefore appealable under s. 588 of the Civil Procedure Code, as amended by Act XII. of

1879. A Subordinate Judge, if he has good grounds, may decline to appoint a receiver even after he has received the necessary authority from the District Judge under s. 505 to do so.—Goosain Dulmir Puri (Plaintiff), Appellant, v. Tekait Hetnarin and others (Defendants), Respondents, 6 Cal. Law Rep. 467.

A DECREE-HOLDER, having assigned a share of her decree, applied several times jointly with such assignee for execution. On a subsequent application made by the original decree-holder alone, the Court, while granting the application, directed that the proceeds arising from such execution only should be paid over to the co-decree-holders jointly. *Held* that the question in dispute being one between co-decree-holders, and not between the parties to the suit or their representatives as contemplated by art. c, s. 244 of the Civil Procedure Code, no appeal would lie from such order.—Gymonee (Decree-holder) v. Radha Romon (Objector), I. L. R., 5 Cal. 592.

WHERE an application was made for the issue of execution of decree, and the District Munsif made an order refusing execution, the decree being one passed not in a regular suit, and governed by the one-year limitation, and the Subordinate Judge on appeal reversed the Munsif's order, applying the three years' limitation, *held* by the High Court that, as Act X. of 1877, s. 588, provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay, and that the High Court could not interfere under s. 622, as the Subordinate Judge had jurisdiction to hear the appeal.—Suryaprakassa Rau v. Vaisya Sannias Rau, I. L. R., 7 Mad. 401.

ON THE 25th June, 1879, a Subordinate Judge made an order setting aside the sale of immoveable property in the execution of a decree, from which an appeal was preferred, under Act X. of 1877, to the District Court on the 25th July, 1879, before Act XII. of 1879 came into force. *Held* that, as the appeal would not have lain at all had Act XII. of 1879 been in force on the date of its institution, s. 102 of that Act did not apply, but as the appeal lay to the District Court under the law in force on that date, it was competent to dispose of it under the provisions of s. 6 of Act I. of 1868.—Durga Pershad (Decree-holder) v. Ram Charan and another (Judgment-debtors), I. L. R., 2 All. 785.

ALTHOUGH Act X. of 1877, s. 57, contemplates the return of the plaint, should error be patent when it is first presented, yet there is nothing in the wording of that section which forbids the return of the plaint at a later stage in the suit. Where, therefore, after the issues in a suit were framed, the Court decided that it had no jurisdiction, and returned the plaint to be presented in the proper Court, *held* that in so doing the Court acted under s. 57; and its decision, not coming within the definition of a "decree" in Act XII. of 1879, s. 2, was not appealable as such, but was appealable under Act X. of 1877, s. 588, as an order.—Abdul Samad v. Rajendra Kishor Singh, I. L. R., 2 All. 357.

A DISTRICT Court transferred for trial a suit instituted in a Court subordinate to it to another Court subordinate to it. The Court in which the suit was instituted was not the one in which the suit should have been instituted, and consequently the Court to which it was transferred made an order dismissing it, and directing the return of the plaint for presentation to the proper Court. *Held* that such order must be taken to have been passed under s. 57 of the Civil Procedure Code, and was therefore appealable under s. 588 (6); and that the defect of jurisdiction arising out of the institution of the suit in the wrong Court was not cured by the transfer of the suit.—Pachoni Awasthi v. Ilahi Bakhsh, I. L. R., 4 All. 478.

A SUIT to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court. After the suit had been admitted, and the parties called on to produce evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in suit being beyond the jurisdiction of a Munsif. *Held* that, under Act VIII. of 1859, the Munsif's order was appealable to the lower Appellate Court, and under Act X. of 1877, the lower Appellate Court's order to the High Court.—Kalian Dass and others (Plaintiffs) v. Nawal Singh and others (Defendants), I. L. R., 1 All. 620.

By a decree in an administration-suit, A was appointed receiver "to manage the estate." A died, and by a subsequent order B was appointed receiver. One of

the defendants in the suit applied to have B removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibai (Plaintiff) v. Limji Nowroji Banaji and others (Defendants)*; *Harrivallbhdás Calliándás (Original Defendant), Appellant, v. Ardasar Framji Moos (Receiver and Respondent)*, I. L. R., 5 Bom. 45.

THE Court of first instance made an order returning the plaint in a suit to be presented to the proper Court, on the ground that it was not competent to try such suit. On appeal from such order the Appellate Court, holding that the Court of first instance was competent to try such suit, made an order "decreeing the appeal." It subsequently made an additional order directing that the case "should be returned for re-trial." On appeal to the High Court from such additional order, *held* that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which, under the last clause of s. 588 of Act X. of 1877, was final, and not an appeal from an order remanding a case under s. 562, the character of the original order of the Appellate Court not being altered by the passing of the additional order.—*Krishna Ram (Defendant) v. Narsingh Sevak Singh and others (Plaintiffs)*, I. L. R., 3 All. 855.

A SUIT was instituted in September, 1877, when Act VIII. of 1859 was in operation, and a decree was passed on the 2nd February, 1878, after the repeal of that Act. An appeal was preferred, but, on coming on for hearing, was dismissed for default on the 31st of May, neither the appellants nor their pleader having appeared. On the 21st June, the appellants applied, under s. 558 of Act X. of 1877, to have the appeal restored, on the ground that the pleader whom they had engaged was a lunatic, and that, having engaged a pleader, they had thought it unnecessary to appear in person. The Judge rejected the application, and the applicants now appealed against the order rejecting this application. *Held* that the order of the 21st of June was made under Act X. of 1877, and was therefore open to appeal under s. 588 of that Act. *Ranjit Singh v. Meharban Koer* (2 C. L. R. 391) and *Burkut Hoosen v. Majidoon Nissa* (3 C. L. R. 208) cited and distinguished.—*Shaik Elahee Bakhsh and others (Plaintiffs), Appellants, v. Musammat Morachoo and others (Defendants), Respondents*, 3 Cal. Law Rep. 593.

THE lower Appellate Court (Subordinate Judge) decided on appeal by the defendants from the decree of the Court of first instance (Munsif) that the Court of first instance had no jurisdiction to entertain the suit, as the value of the subject-matter of the suit exceeded the pecuniary limits of its jurisdiction; and ordered that "the appellant's appeal be decreed, the decision of the Munsif be reversed, and the record of the case be sent to the Munsif to return the plaint to the plaintiff for presentation to the proper Court." The plaintiff appealed to the High Court from such order as an order returning a plaint to be presented to the proper Court. *Held* that such order could not be regarded as one to which art. 6 of s. 588 of Act X. of 1877 was applicable. That relates to orders returning plaints for amendment or to be presented to the proper Court passed by a Court of first instance, and to an order by an Appellate Court upon an appeal to it from the decree of a Court of first instance on general grounds. The plaintiff's proper course was to have preferred a second appeal.—*Bindeshri Chaubey and others (Plaintiff) v. Nandu (Defendant)*, I. L. R., 3 All. 456.

AN ALLOTTEE, under a private partition, sued to stay subsequent partition-proceeding brought under Reg. XIX. of 1814, and to have his possession confirmed. The defendants objected to the valuation of the suit, and to the suit being heard by the Civil Courts, no proceedings having first been instituted before the Revenue Authorities. *Held* that such a suit should be considered to be one for a declaratory decree, or for something in the nature of an injunction, and that, therefore, the plaint should not be stamped according to the value of the entire estate. That the question, whether the Collector would have brought the lands to partition, depended upon whether they were held "in common tenancy;" if they were not so held, the Collector would be only competent to make an assignment of the revenue in proportion to the several portions of the land held by the shareholders. That a private partition is no bar to proceedings in the Revenue Courts under s. 30 of Reg. XIX.

of 1814. A Munsif dismissed a suit, on the ground that, if it had been properly valued, it would not have come within his jurisdiction. The District Judge affirmed the Munsif's judgment, and directed the plaintiff to be returned for presentation to the proper Court under s. 57 of the Civil Procedure Code. This was not done. *Held* that a second appeal would lie. *Ajoodhia Lall v. Guman Lall* (2 C. L. R. 134) approved. *Ajoodhya Pershad v. Kristo Dyal* (15 W. R. 165) dissented from.—*Joy-nath Roy (Plaintiff) v. Lall Bahadoor Singh and others (Defendants)*, I. L. R., 8 Cal. 126.

What Courts to hear appeals.

589. An appeal from any order specified in section 588, clauses (15), (16), and (17), shall lie to the High Court.

When an appeal from any other order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made, or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

AN ORDER on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—*The Collector of Bijoor, Manager of the estate of Chandbri Ranjit Singh, a Minor (Defendant), v. Jafar Ali Khan (Plaintiff)*, I. L. R., 3 All. 18.

590. The procedure prescribed in Chapter XLI. shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

591. Except as provided in this chapter, no appeal shall lie from any order passed by any Court in the exercise of its original or appellate jurisdiction; but if any decree be appealed against, any error, defect, or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

AN ORDER made by a lower Court, directing a suit to be re-admitted and registered on the file of the Court, is not appealable. Second appeals to the High Court must either come within Act X. of 1877, chap. xli., or ss. 588 and 591.—*Hirdhamun Jha v. Jinghoor Jha*, I. L. R., 5 Cal. 711.

THE High Courts in India possess the power of enforcing obedience to their orders by attachment for contempt. An order for attachment for contempt is not an order in exercise of the High Court's civil jurisdiction, and, therefore, does not come within the provision of s. 591 of the Civil Procedure Code. Contempts are in the nature of offences, and, therefore, under s. 15 of the Letters Patent, 1865, an appeal lies from an order of committal for contempt. In dealing with an appeal from such an order, the Appellate Court will not go behind the order the disobedience to which constitutes the contempt.—*Navivahoo v. Narotamdas*, I. L. R., 7 Bom. 5.

IN A suit for rent, where the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due, *held*, where the plaintiff disputed this, and objected to such course being taken, that it was improper to add such person as co-plaintiff, and that, if added at all, it should be as defendant, in order that the issue between him and the plaintiff might be properly tried. *Held* also that in such a case an appeal lies under s. 591 of the Civil Procedure Code.—*Googlee Sahoo v. Premalal Sahoo*, I. L. R., 7 Cal. 148.

CHAPTER XLIV.

OF PAUPER APPEALS.

592. Any person entitled under this Code or any other law to pre-fer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in Chapters XXVI., XLI., XLII., and XLIII., in so far as those rules are applicable.

Who may appeal as pauper. **Provided** that the Court shall reject the application, unless, upon a perusal thereof, and of the judgment and decree against which the appeal is made, it seems reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Procedure on application for admission of appeal. **No APPEAL** lies under Act X. of 1877 from an order made under that Act rejecting an application for permission to sue as a pauper.—*Collis v. Manohar Das*, I. L. R., 1 All. 745 (F.B.).

AN APPLICATION for permission to appeal as a pauper was presented, not by the applicant personally, but by his pleader, and was on that ground rejected. *Held*, on an application to the High Court for revision, that s. 622 of Act X. of 1877 did not apply to a proceeding of so purely an interlocutory a character as mentioned in s. 592, and such application therefore could not be entertained.—*Harsaran Singh (Plaintiff) v. Muhammad Raza and others (Defendants)*, I. L. R., 4 All. 91.

593. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court :

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such inquiry.

Inquiry into pauperism.

Proviso.

CHAPTER XLV.

OF APPEALS TO THE QUEEN IN COUNCIL.

594. In this chapter, unless there be something repugnant in the subject or context, the expression "decree" includes also judgment and order.

"Decree" defined.

HELD that the High Court has not any power, under Act X. of 1877, or cl. 31 of the Letters Patent, to grant leave to appeal to Her Majesty in Council from an order of the Court remanding a suit for re-trial. The provisions of cl. 31 of the Letters Patent are repealed by the Code, and Act VI. of 1874 which preceded it.—*Talley (Judgment-debtor) v. Jaishankar and another (Defendants)*, I. L. R., 1 All. 726.

595. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained,

When appeals lie to Queen in Council.

an appeal shall lie to Her Majesty in Council—

(a) from any final decree passed on appeal by a High Court or any other Court of final appellate jurisdiction;

(b) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

(c) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

AN ORDER of the High Court directing execution to proceed is not a "final" decree, judgment, or order within the meaning of cl. a, s. 595 of the Code of Civil Procedure, Act X. of 1877.—*Jogessur Sabal and others (Judgment-debtors) v. Musammatt Muracho Koore*, under the Court of Wards (Decree-holder), 1 Cal. Law Rep. 354.

THE High Court has not any power, under Act X. of 1877, or cl. 31 of the Letters Patent (which is repealed by Acts VI. of 1874 and X. of 1877), to grant leave to appeal to the Privy Council from an order of the Court remanding a suit for re-trial.—*Talley (Judgment-debtor) v. Jaishankar and another (Defendants)*, I. L. R., 1 All. 726.

WHERE the High Court reverses the decree of the Court below, and remands the case for retrial on the merits, and for a new decree to be passed by the Court below, no appeal lies as a matter of right, under s. 595 of the Code of Civil Procedure (Act XIV. of 1882), to the Privy Council, albeit the value of the subject-matter admittedly exceeds Rs. 10,000, as such a decree of the High Court is not a final, but an interlocutory, decree. In such a case a certificate should first be obtained under cl. c of the section that the case is a fit one for appeal to Her Majesty in Council.—*Mahant v. Candasama*, I. L. R., 8 Bom. 548.

AN ORDER passed on appeal by a High Court determining a question mentioned in s. 244 of Act X. of 1877 is a final "decree" within the meaning of s. 595 of that Act. *Held*, therefore, where such an order involved a claim or question relating to property of the value of upwards of ten thousand rupees, and reversed the decisions of the lower Courts, that notwithstanding the value of the subject-matter of the suit in which the decree was made in the Court of first instance was less than that amount, such order was appealable to Her Majesty in Council.—*Ram Kirpal Shukul (Appellant) v. Rup Kuar (Respondent)*, I. L. R., 3 All. 633.

A CANDIDATE at an examination for pleaderships, a mistake in the computation of his marks having been made, was erroneously declared qualified for admission as a vakil of the High Court by a Government Notification. The mistake having been discovered, such Notification was, so far as he was concerned, cancelled. He then petitioned the High Court in the matter, and was informed by it that his name must be excluded from such Notification, as he had not qualified by obtaining the requisite number of marks. The candidate having applied for leave to appeal to Her Majesty in Council, *held* that Chap. XLV. of the Civil Procedure Code had no application, and the matter was not one in which the High Court was concerned to grant or refuse leave to appeal to Her Majesty in Council.—*In the matter of the Petition of Sukh Nandan Lal*, I. L. R., 6 All. 163.

THE District Judge of Ghazipur re-called to his own file the proceedings in the execution of a decree which were pending in the Court of the Subordinate Judge of Shahabad, and disallowed an application for the execution of the decree which had been preferred to that Judge. The High Court, on appeal from the order of the District Judge, annulled his order as void for want of jurisdiction, and remitted the case in order that the application might be disposed of on its merits, directing that the record of the case should be returned to the Subordinate Judge of Shahabad. On an application for leave to appeal to Her Majesty in Council from the order of the High Court, *held* that such order was in the nature of an interlocutory order, and was not one from which the High Court could be ought to grant leave to appeal to Her Majesty in Council.—*Palak Dhari Rai and others (Judgment-debtors) v. Radha Pershad Singh (Decree-holder)*, I. L. R., 2 All. 65.

CERTAIN persons interested in an award applied under s. 525 of the Civil Procedure Code to have it filed in Court. The Court made an order under s. 526 "that the claim of the plaintiffs be decreed." The defendants appealed to the High Court from this "decree." The High Court held that the appeal would not lie; and suggested to the plaintiffs to apply to the lower Court to give judgment according to the award, and a decree to follow it. Thereupon the plaintiffs made an application to the lower Court of the nature suggested, but styled it one for review of judgment. The lower Court granted the so-called review of judgment. The defendants appealed from the order of the lower Court, contending that the "review of judgment" had been improperly granted. On the 23rd June, 1880, the High Court held that the order of the lower Court was not appealable, not being one passed on review of judgment, but on an application to give judgment and decree in accordance with an award which had been filed in Court. The defendants applied for leave to appeal to Her Majesty in Council from the order of the High Court of the 23rd June, 1880. Held that such order was not a "final decree" within the meaning of s. 595 (a) of the Civil Procedure Code, and therefore it was not appealable to Her Majesty in Council.—*Ramadhin Mahton and others v. Ganesh and another*, I L R., 4 All. 238.

596. In each of the cases mentioned in Value of subject-matter. clauses (a) and (b) of section 595,

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards;

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value;

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

A AND B purchased the same properties, deriving the title through different persons. The value of the properties with mesne-profits was over Rs. 10,000. B granted two patni-leases of the properties to different persons. A was, therefore, obliged to bring two suits for the recovery of the properties, and the value of the subject-matter in each suit was less than Rs. 10,000. Held that an appeal would lie to the Privy Council.—*Jogul Kishore (Plaintiff) v. Jotendro Mohun Tagore (Defendant)*, I L R., 8 Cal. 210

AN ORDER passed on appeal by a High Court determining a question mentioned in s. 244 of Act X. of 1877 is a final "decree" within the meaning of s. 595 of that Act. Held, therefore, where such an order involved a claim or question relating to property of the value of upwards of ten thousand rupees, and reversed the decisions of the lower Courts, that notwithstanding the value of the subject matter of the suit in which the decree was made in the Court of first instance was less than that amount, such order was appealable to Her Majesty in Council.—*Ram Kirpal Shukul (Appellant) v. Rup Kuar (Respondent)*, I L R., 3 All 633.

597. Notwithstanding anything contained Bar of certain appeals. in section 595,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

598. Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

Application to Court whose decree complained of.
Time within which application must be made.

599. Such application must ordinarily be made within six months from the date of such decree.

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

600. Every petition under section 598 must state the grounds of appeal, and pray for a certificate, either that, as regards amount or value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Effect of refusal of certificate.

601. If such certificate be refused, the petition shall be dismissed :

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable, within thirty days from the date of the order, to the High Court, to which the former Court is subordinate.

602. If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date,

Security and deposit required on grant of certificate.

(a) give security for the costs of the respondent, and
(b) deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being ;

(2) papers which the parties agree to exclude ;

(3) accounts or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and

(4) such other documents as the High Court may direct to be excluded :

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

THE time allowed by s. 602 of the Civil Procedure Code for giving the security and making the deposit required by that section may be extended.—*Fazul-un-nissa Begum v. Mulo*, I. L. R., 6 All. 250.

COSTS of printing and translation, certified by the Deputy Registrar of the High Court, are a necessary part of the costs of an appeal to the Privy Council. The amount of such costs is left to be ascertained by the High Court, and is not assessed by the Privy Council Office.—*Ram Coommar Ghose v. Prosunno Coommar Sannyal*, I. L. R., 10 Cal. 106.

THE words in s. 602 of Act X of 1877, relating to the time within which security is to be given, are directory only; and although they are not to be departed from without cogent reason, the Court from which the appeal is preferred has the right of extending the time. In this case, a satisfactory explanation having been given of delay in giving security until after the time limited by the above section had expired, *held* that the Court had rightly exercised discretion in extending the time. In the matter of the Petition of Soorj mukhi Koer (I. L. R., 5 Cal. 2) approved. The paternal grandmother of a deceased village shareholder claiming to inherit in preference to his male collateral relations, the issue was fixed with the assent of the pleaders on both sides, whether the plaintiff, as a female, was excluded from inheriting by the custom of the family or tribe. *Held* that this was substantially a question of fact, and that on the evidence, which included the village *wajib-ul-arz*, the customary exclusion of females was not proved.—Burjore and Bhawani v. Bhagana, I. L. R., 10 Cal. 557.

603. When such security has been completed and deposit made

Admission of appeal and to the satisfaction of the Court, the Court procedure thereon. may

- (a) declare the appeal admitted, and
- (b) give notice thereof to the respondent, and shall then
- (c) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

604. At any time before the admission of the appeal, the Court

Revocation of acceptance of security. may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

605. If at any time after the admission of the appeal, but before

Power to order further security or payment. the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing, or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

Effect of failure to comply with order. **606.** If the appellant fail to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

607. When the copy of the record, except as aforesaid, has been

Refund of balance of deposit. transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, (if any) of the amount which he has deposited under section 602.

608. Notwithstanding the admission of any appeal under this

Powers of Court pending appeal. chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

But the Court may, if it thinks fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

(a) impound any moveable property in dispute or any part thereof, or

(b) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

THREE different plaintiffs, claiming through the same original title to be the owner of a certain mahál, sued the same defendant in separate suits for possession and for the mesne profits of their respective shares. The defence raised being the same in each case, the suits were heard together, the result being that in both the lower Courts and in the High Court the plaintiffs obtained a decree for their claims. The aggregate value of the three suits amounted to more than Rs. 10,000, though the value of each suit was under that sum. The defendant applied to be allowed to appeal in each case to Her Majesty in Council. *Held* that he was entitled to have each of the three cases admitted under the second clause of s. 596 of Act X of 1877, as the decree in each case involved indirectly a question of title to property of the amount or value of Rs. 10,000. The Court has power under s. 608 to stay execution of a decree of the High Court in a suit subsequently appealed to Her Majesty in Council. *Quære*.—Whether the Court has power to order restitution of possession of property already taken in execution of its own decree pending an appeal to the Privy Council?—*Khaja Ashan-ul-lah (Appellant) v. Karoona Moyi Chaudhri (Respondent)*; *Rohani Chaudhrai (Appellant) v. Kishen Gobind Dass (Respondent)*, 4 Cal. Law Rep. 125.

609. If, at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

610. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

BEFORE a decree-holder in the District Court can obtain execution of a decree which has been affirmed by the Privy Council, he must produce, on the application for execution, a certified copy of the order passed by Her Majesty in Council.—*Juggernath Sahoo v. Judoo Roy Singh*, I. L. R., 5 Cal. 329.

AN APPEAL was preferred to the Privy Council from a final decree passed upon appeal by the High Court, and B and certain other persons on behalf of the appellant gave security for the costs of the respondent. The Privy Council dismissed the appeal, and ordered the appellant to pay the costs of the respondent. The respondent applied to the Court of first instance for the execution of that order against B and the other persons as sureties. *Held* that under Act X. of 1877, ss. 610 and 253, such order could be executed against the sureties.—*Bans Bahadur Singh v. Mughla Begam*, I. L. R., 2 All. 604 (F B.).

THE provisions of Act X of 1877, s. 610, are not to be construed as restricting the only admissible evidence of an order of Her Majesty in Council to a certified copy, on an application for execution made under that section. They must be read as directory, having the object that proper information regarding the order shall be supplied to the Courts in India. Where the original order (given, according to the practice in England, to the successful party, or to one of such parties) had not been filed in the High Court, so as to enable the proper officer to supply a certified copy, *held* that a copy, though not certified by him, might accompany a petition for execution under s. 610.—*Hurish Chunder Chowdhry v. Kalisunderi Debi*, I. L. R., 9 Cal. 482.

A DECREE obtained on appeal by certain defendants in the High Court was appealed to the Privy Council by one only of the two plaintiffs to the suit, and the decision of the High Court was reversed; the plaintiff who had appealed assigned her share in the order of the Privy Council to one of the defendants, and delivered him the certified copy of the decree made in the Privy Council. The plaintiff who had not appealed to the Privy Council applied to the High Court for leave to transmit the order to the Court of first instance for execution of the share decreed to him, but, on account of the assignment above mentioned, was unable to produce the certified copy of the decree of the Privy Council. The Judge presiding over the Privy Council Department in the High Court held that the production of a certified copy of the order of the Privy Council was excusable under the circumstances, but refused the application, on the ground that the decree of the Court of first instance, which was affirmed by the Privy Council, could only be executed as a whole, and not partly by one of the plaintiffs. *Held* on appeal *per* Garth, C.J.—That the duties of a Judge in dealing with the meaning of decrees of the Privy Council are purely ministerial, and that any order made in such ministerial capacity could not be considered a judgment, and could not, therefore, be made the subject of an appeal to a Bench of the High Court under s. 15 of the Charter. *Per* White and Mitter, J.J.—An order of a Judge presiding over the Privy Council Department in the High Court, rejecting an application for execution, is a final order, and is a judgment within the meaning of

s. 15 of the Charter, and is therefore appealable—In the matter of the Petition of Kally Soondery Dabia ; Kally Soondery Dabia v. Harriish Chunder Chowdhry, I. L. R., 6 Cal. 594.

611. The orders made by the Court which enforces or executes the order of Her Majesty in Council, relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

Power to make rules.

612. The High Court may, from time to time, make rules consistent with this Act to regulate—

- (a) the service of notices under section 600 ;
- (b) the grant or refusal of certificates, under sections 601 and 602, by Courts of final appellate jurisdiction subordinate to the High Court ;
- (c) the amount and nature of the security required under sections 602, 605, and 609 ;
- (d) the testing of such security ;
- (e) the estimate of the cost of transcribing the record ;
- (f) the preparation, examination, and certifying of such transcript ;
- (g) the revision and authentication of translations ;
- (h) the preparation of indices to transcripts of records, and of lists of the papers not included therein ;
- (i) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council,

and all other matters connected with the enforcement of this chapter. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

Publication of rules.

613. All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council, and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

614. In sections 595 and 612, the expression “High Court” shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

615. The rules and restrictions referred to in Bengal Regulation III. of 1828, section IV., clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

Saving of Her Majesty's pleasure,

616. Nothing herein contained shall be understood—

- (a) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council or their conduct before the said Judicial Committee.

And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize-Courts.

PART VII.

CHAPTER XLVI.

OF REFERENCE TO AND REVISION BY THE HIGH COURT.

617. If, before or on the hearing of a suit or an appeal in which the decree is final, or if, in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

WHERE A, under the terms of a will, although not expressly appointed an executor, was directed to receive and pay the testator's debts, and to get in and distribute his personal estate, *held* that A must be taken to have been appointed under the will an executor by implication. In the goods of Baylis (L. R. 1 P. M. 21) followed. The order made by a District Judge on an application for probate, not being a final order, cannot be referred for the opinion of the High Court under s. 617 of the Code of Civil Procedure. But the Court will, under certain circumstances, entertain such an application, as a Court of concurrent jurisdiction, under s. 264 of the Indian Succession Act.—In the matter of Manohar Mukarjee (Petitioner), 1. L. R., 5 Cal. 756.

618. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred;

but no execution shall be issued, property sold, or person imprisoned in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

619. The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

- M.S.C.C. Costs of reference to High Court. 620. Costs (if any) consequent on a reference for the opinion of the High Court shall be costs in the case.
- M.S.C.C. 621. When a case is referred to the High Court under this chapter the High Court may return the case for amendment, and may alter, cancel, or set aside any decree or order which the Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit.
- M.S.C.C. 622. The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order in the case as the High Court thinks fit.

AN ORDER under s. 25 of the Civil Procedure Code, transferring a suit in which an appeal would lie from the decree made therein, is not subject to revision by the High Court under s. 622.—*Farid Ahmad v. Dulari Bibi*, I. L. R., 6 All. 233.

AN ORDER under s. 335 of the Civil Procedure Code is subject to revision by the High Court under s. 622 of that Code. *Shiva Nathaji v. Jom Kashinath* (I. L. R., 7 Bom. 341) followed.—*Sheoraj Singh v. Banwari Das*, I. L. R., 6 All. 172.

THE discretionary power of a Civil Court, before or against which an offence mentioned in s. 468 or 469 of Act X. of 1872 is alleged to have been committed, to grant or withhold sanction to the prosecution for such offence, is not subject to revision by the High Court under s. 622 of Act X. of 1877.—In the matter of the Petition of Madho Pershad, I. L. R., 3 All. 508.

AN ORDER under s. 251 of the Civil Procedure Code, setting aside an award, made on a reference to arbitration in the course of a suit, under chapter xxxvii. of the Code, on the ground of the arbitrator's misconduct, is not subject to revision by the High Court in the exercise of the powers conferred on it by s. 622 of the Code.—*Chattar Singh v. Lekhraj Singh*, I. L. R., 5 All. 293.

S. 9 of the Specific Relief Act does not prohibit a rehearing under s. 105 of the Code of Civil Procedure. A rehearing differs widely from a review. A High Court can interfere under s. 622 of the Code of Civil Procedure without an application made to it by a party to a suit.—*Andrew Anthony* (Plaintiff), Appellant, and *Rev. J. M. Dupont* (Second Defendant), Respondent, I. L. R., 4 M. 217.

AFTER a decree had been made *ex parte*, the defendant applied to have it set aside. The Subordinate Judge refused the application, but his order was reversed by the District Judge. *Held* that the order of the District Judge was final under s. 588, and that no second appeal would lie; nor would the Court interfere under s. 622 of the Code.—*Aubinash Chunder Mookerjee v. Martin*, I. L. R., 8 Cal. 832.

THE rule of English practice which prevents a minor from instituting a suit *in forma pauperis* through his next friend, unless he gives proof not only that he is himself a pauper, but that the next friend is a pauper, and that he cannot get any substantial person to act as his next friend, is not to be found in, or deduced from, the provisions of the Civil Procedure Code.—*Venkatanarasayya* by his father and guardian *Linga Rayadu* (Petitioner) *v. Achemma* (Counter-Petitioner), I. L. R., 3 Mad. 3.

WHERE an auction-purchaser applied to the High Court to set aside, in the exercise of its powers under s. 622 of the Civil Procedure Code, an order setting aside a sale of immoveable property in execution of a decree, on the ground that such order was illegal, such application being made nearly seventeen months after the date of such order, the Court, having regard to the time that had elapsed before

such application was made, refused to interfere.—In the matter of the Petition of Durga Prasad v. Sheo Charan Lal and others, I. L. R., 4 All. 154.

It is only on the application of a party interested that the High Court can act as a Court of Revision under s. 622 of the Civil Procedure Code. Accordingly, where a Munsif, considering that the Subordinate Judge had acted without jurisdiction in setting aside, on appeal, certain orders made by him, brought the matter to the knowledge of the District Judge, who took the same view, and the latter referred the case to the High Court under that section, it was held that the Court had no power to interfere.—Muhammad Faiz Chaudhri (Plaintiff) v. Goluck Dass (Defendant), 7 Cal. Law Rep 191

WHERE a Court improperly refused to amend a decree, which was at variance with the judgment, *held* that in so acting the Court had acted in the exercise of its jurisdiction illegally and with material irregularity within the meaning of s. 622 of the Civil Procedure Code, and its order was consequently subject to revision under that section. On the question whether the High Court should refrain from exercising its powers under s. 622 by reason of the long time which had elapsed from the date of the decree, *held* that the petitioner was not fairly chargeable with laches.—Balmakund v. Sheo Jatan Lal, I. L. R., 6 All. 125.

WHERE an application was made for the issue of execution of decree, and the District Munsif made an order refusing execution, the decree being one passed not in a regular suit, and governed by the one-year limitation, and the Subordinate Judge on appeal reversed the Munsif's order, applying the three years' limitation, *held* by the High Court that, as Act X. of 1877, s. 588, provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay; and that the High Court could not interfere under s. 622, as the Subordinate Judge had jurisdiction to hear the appeal.—Suryaprakasa Ráu v. Vaisya Sanniási Ráu, I. L. R., 1 Mad. 401.

AN APPLICATION to sue as a pauper having been refused on the ground that the suit was barred by limitation, the High Court, on revision, permitted the applicant to renew his application to the Court below. The Subordinate Judge verbally rejected this second application, stating that he would deliver a written judgment. Before the written judgment was delivered, the applicant offered to pay the usual court-fees (although not actually tendering them at the time), and asked that the petition might be taken as a plaint filed on the date of the first application. This offer was mentioned and refused in the written judgment. *Held*, on the case coming up to the High Court under Act X. of 1877, s. 622, that the circumstances of the case were not such as would justify the Court in interfering under that section.—Ramashai Sing v. Maniram, I. L. R., 5 Cal. 807.

No COURT, other than a Court of Appeal or a High Court acting under s. 622, can discharge an order of attachment issued by another Court. Where a claimant to property attached in execution of a decree intervenes, but fails to get the order of attachment set aside, and is compelled to bring a suit to establish his right, the discharge of the order of attachment cannot properly be asked for in such suit. The intervenor, having established his title by declaratory decree or otherwise, should then carry the decree to the Court by which the order of attachment was issued, and such Court is bound to recognize the adjudication, and govern itself accordingly.—Naráyanrav Dainolav v. Baikrishna Mahadev Gadre (I. L. R., 1 Bom. 529) followed.—Kolasherri Illath Narainan and another (Plaintiffs), Appellants, and Kolasherri Illath Nilakandan Nambudri and another (Defendants), Respondents, I. L. R., 4 Mad. 131.

AFTER a mortgage had been foreclosed under the provisions of Regulation XVII. of 1806, the representative of the mortgagor deposited the mortgage-money in Court. The District Judge ordered that the money should be paid to the mortgagee on the ground that the mortgagor had not been personally served with the notice required by s. 8 of that Regulation, and that it did not appear that she had been aware of the foreclosure-proceedings. The District Judge subsequently ordered the mortgagee, who was in possession of the mortgaged property under the term of the mortgage, to surrender the property. The mortgagee applied to the High Court to revise these orders under s. 622 of Act X. of 1877. *Held* that the application was entertainable

under the provisions of that section, and that the orders of the District Judge were made without jurisdiction, and should be set aside.—*Hazari Lal (Petitioner) v. Kheru Rai (Opposite Party)*, I. L. R., 3 All. 576.

WHEN a Court has refused to file an award upon an application under s. 525, Civil Procedure Code, no appeal lies against such decision, which is an order, and not a decree; but the High Court can interfere under s. 622. An award made under s. 525, which is partly within and partly exceeds the terms of the submission to arbitration, cannot be enforced by summary procedure under s. 526 as to such portion as does not exceed those terms. To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a *dévassam* as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure.—*R. Ry. Māna Vikrama, Zāmorin, Mahārājā Bahadur of Calicut (Plaintiff), Petitioner, v. Mallichery Kristnan Nambudri (Defendant), Counter-Petitioner*, I. L. R., 3 Mad. 68.

S. 522 of the Code of Civil Procedure, 1877, which provides that no appeal shall lie from a decree upon an award, except in so far as the decree is in excess of, or not in accordance with, the award, assumes that the award has been regularly and properly passed by arbitrators duly appointed. Where two of five arbitrators nominated by the parties to a suit and appointed by the Court had not consented before, and, after appointment, declined to act, and the Court appointed two arbitrators in their place against the consent of one of the parties to the suit, *held* that, under the circumstances, the appointment of the new arbitrators was not warranted by the provisions of s. 510 of the Code of Civil Procedure, and the order of reference to such arbitrators, the award made by them, and the decree passed upon the award, were illegal. *Held* also that the High Court could set aside the decree under the powers given by s. 622 of the Code of Civil Procedure.—*Pugardin v. Moidin*, I. L. R., 6 Mad. 414.

S INSTITUTED a suit against T in the Court of the Assistant Collector of the first class, who dismissed the suit. On appeal by S the District Court gave her a decree. On second appeal by T the High Court held that, as the suit was one of the nature cognizable in a Court of Small Causes, a second appeal would not lie in the case, and dismissed it. T thereupon applied to the High Court to set aside, under the provisions of s. 622 of Act X. of 1877, the proceedings of both the lower Courts, on the ground that both those Courts had exercised a jurisdiction not vested in them by law. *Held* that the High Court was competent to entertain such application, and to quash the proceedings of both the lower Courts, under the provisions of s. 622 of Act X. of 1877, and the proceedings of both those Courts should be quashed. Observations by Stuart, C.J., on the powers of revision of the High Court under s. 622 of Act X. of 1877.—*Sarnam Tewari and another (Defendants) v. Sakina Bibi (Plaintiff)*, I. L. R., 3 All. 417.

PER PEARSON, J., Oldfield, J., and Straight, J.—When, under s. 622 of Act X. of 1877, the High Court has called for the record of a case in which no appeal lies to it, it may, under that section, pass any order in such case which it might pass if it dealt with the case as a second appeal under chap. xlii. of that Act. *Per* Stuart, C.J.—The High Court may, under that section, pass in such case any order, whether in regard to fact or law, as it thinks proper. Where, in a case of the execution of a decree in which no second appeal lay to the High Court, the Appellate Court held, on the construction of the decree, that it awarded interest on the principal amount of the decree, the High Court, under s. 622 of Act X. of 1877, holding that the Appellate Court has misconstrued the decree, and that the decree did not award such interest, modified the order of the Appellate Court accordingly.—In the matter of the Petition of Manvi Muhammad (Judgment-debtor) *v. Syed Husain (Decree-holder)*, I. L. R., 3 All. 263 (F.B.).

THE purchaser at a sale by public auction did, by the exercise of fraud and collusion with the agent of the execution-creditor (though without the creditor's personal knowledge), succeed in becoming the purchaser at a depreciated value. There was no material irregularity in publishing or conducting the sale. *Held* that the

Court which ordered the sale had jurisdiction to refuse to confirm the sale on the ground of the fraud practised by the agent of the execution-creditor and the purchaser. *Held* also that the High Court had power under s. 622 of Act X. of 1877 to rescind the order made by the Court of first instance confirming the sale. *Held* by Kernan, J.—That the party defrauded ought not to be referred to bring a regular suit. The question ought to be decided at once on motion in the original cause. *Held* by Muttusami Ayyar, J., that fraud was a valid ground of relief on petition when it related to the mode in which the auction was held, and the purchaser was a party to it, but it was doubtful whether fraud was a ground of relief on petition when it was a remote cause of the sale.—*Subbaji Ram v. Srinivasa Rao and Palliah*, I. L. R., 2 Mad. 264.

A PERSON claiming to be a co-sharer in certain undivided immoveable property, a share of which had been sold in execution of a decree, objected to the confirmation of the sale in favour of the person recorded as the auction-purchaser, and prayed that it might be confirmed in his favour, with reference to the provisions of s. 310 of the Civil Procedure Code. The Court disallowed the objection, and confirmed the sale in favour of the auction-purchaser. The objector thereupon applied to the High Court for revision of the order of the lower Court under s. 622 of the Civil Procedure Code. *Held* that, having been allowed to object to the confirmation of the sale, and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in s. 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under s. 622 of the Code; but that, as he was not one of the persons who was competent to avail himself of the provisions of s. 311, he had no *locus standi* to justify his application to the lower Court, and the application for revision must therefore be dismissed.—*Bisheshar Kuar v. Hari Singh*, I. L. R., 5 All. 42.

A AND B, both of whom set up a claim to certain land, brought separate rent-suits against the tenants. In none of these suits did the amount claimed exceed Rs. 100. Subsequently to the institution of the rent-suits, A sued B to establish his title to the land in dispute. The District Judge, before whom the rent-suits came on appeal, allowed them to stand over until the decision in the suit between A and B. That suit was decided in favour of B, and the Judge then decided the rent-suits instituted by B in his favour, and dismissed the suits instituted by A. *Held* that no second appeal would lie in the rent-suits, as no question of title between parties having conflicting claims was decided in them. *Held* also that there was no such irregularity on the part of the District Judge in the course which he pursued, of making his decision in the rent-suit depend upon the decision in the suit to establish title, as would justify the Court in interfering under s. 622 of the Civil Procedure Code. Section 102 of Beng. Act VIII. of 1869 was enacted in order to protect parties in the position of raiyat-defendants, and to prevent their being dragged up to the High Court in cases where the decree or demand is under Rs. 100. In such cases the decree is intended to have the same effect as that of the Small Cause Court.—*Doorga Narain Sen v. Ram Lall Chhutar*, I. L. R., 7 Cal. 330.

CERTAIN immoveable property was, on the 15th February, 1879, notified for sale under a decree of a Civil Court on 15th March following, so that only 29, instead of 30, days elapsed between the day of the sale and the notification. The sale having taken place, the execution-debtor applied to the Deputy Commissioner to set it aside upon the ground that the sale was illegal, the requirements of Act X. of 1877, s. 290, being essential to its validity. Upon that ground the sale was set aside as illegal by the Deputy Commissioner. On appeal, the Judicial Commissioner reversed this decision, on the ground that the fact of the sale having taken place 29 instead of 30 days after the notification was merely an irregularity, and that, as the execution-debtor had not shown that he had suffered any damage from the irregularity, the sale ought to be confirmed. An application was then made to a Division Bench of the High Court to set aside the order of the Judicial Commissioner confirming the sale, upon the ground that it was manifestly erroneous, and the Division Bench referred the question to a Full Bench: Whether, assuming the requirements of s. 290 to be essential to the validity of a sale, the High Court had any power, either

under 24 and 25 Vic., c. 105, s. 15, or Act X. of 1877, s. 622, as amended, to set aside the Judicial Commissioner's order. *Held* by the Full Bench, without answering the question referred, that, assuming the requirements of s. 290 to be essential, the High Court had a right, under its summary powers, to set aside the sale itself, notwithstanding (and apart from) the question whether it would set aside) the order of the Judicial Commissioner.—*In re Bhakraj Keori*, I. L. R., 5 Cal. 878 (F.B.).

A Division Bench (Pinhey and Nánabhái Haridás, JJ.) of the High Court referred the following question for the determination of the Full Bench: "Whether the High Court should exercise its extraordinary jurisdiction under s. 622 of the Code of Civil Procedure, or otherwise", on behalf of persons who feel themselves aggrieved by orders passed by Courts below in cases in which it appears the law has specifically prescribed another remedy by suit or otherwise?" *Held* that the question did not admit of a precise categorical reply; that the High Court could not impose on itself limitations without regard to circumstances; but that the general principles governing the exercise, by the High Court, of its visitatorial or superintending powers to be deduced from a general survey of the authorities on the subject might be reduced to the form of the following seven propositions, the fifth of which would ordinarily govern in the class of cases alluded to in the question:—(1.) The visitatorial or superintending power of the High Court is so necessary, and almost indispensable, that it is not to be wholly excluded even by a clause in a Statute withdrawing cases under the Statute from its control. When such a Statute has been made a mere pretext, or has been wholly misapplied, the case will be treated as one not really arising under the Statute, but on an evasion or perversion of the Statute, and, as such, subject to the general control of the Court. (2.) The Court, having called up the record or proceedings of a subordinate Court, will itself investigate the facts on which a jurisdiction has been assumed or declined; on which it depends whether the subordinate Court could or could not legally deal with the matter in question, either at all or on the principle to which it has referred the case; or according to which its mode of inquiry or of action may or may not have been in contradiction rather than obedience to the rules of procedure, or the principles implied in them, to such a material extent as to defeat the purpose of the law. (3.) If the Court finds that the external conditions of jurisdiction, of investigation, and of command, have been satisfied by the inferior Court, it will not substitute its own appreciation of evidence, or its own judgment thereon, for the determination of the inferior Court, in any matter committed by the Legislature to the discretion of such Court. (4.) Where an appeal is provided, the Court will not interfere by any peremptory order with the ordinary course of adjudication, save in cases wherein a defeat of the law and a grave wrong are manifest, and are irremediable by the regular procedure. (5.) Where a decree or order of a subordinate Court is declared by the law to be, for its own purposes, final or conclusive, though in its nature provisional, as subject to displacement by the decree in another more formal suit, the Court will have regard to the intention of the Legislature that promptness and certainty should, in such cases, be in some measure accepted instead of juridical perfection. It will rectify the proceedings of the inferior Court where the extrinsic conditions of its legal activity have plainly been infringed; but where the alleged or apparent error consists in a misappreciation of evidence, or misconstruction of the law, intrinsic to the inquiry and decision, it will respect the intended finality, and will intervene peremptorily only when it is manifest that by the ordinary and prescribed method an adequate remedy, or the intended remedy, cannot be had. (6.) The Court will, in all cases, regard its exercise of the extraordinary jurisdiction as discretionary, and subject to considerations of the importance of the particular case, or of the principle involved in it, of delay on the part of an applicant, and of his merits with respect to the case in which the interference of the Court is sought. Should other special causes appear for or against the Court's intervention, due weight is to be given to them, regard being always had to the principles already enunciated. (7.) The Court will "sedulously abstain" from making any order or refusing to make it on grounds the appreciation of which is exclusively assigned by law to some other authority, provided the legal competence be exercised in good faith on matters that may reasonably be understood as within its lawful range.—*Shivá Náthaji v. Joma Káshináth*, I. L. R., 7 Bom. 341.!

PART VIII.

CHAPTER XLVII.

OF REVIEW OF JUDGMENT.

Application for review of judgment. 623. Any person considering himself aggrieved— M.S.C.O.

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred ;

(b) by a decree or order from which no appeal is hereby allowed ; or

(c) by a judgment on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order, or to the Court (if any) to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

THE order passed under the above section can be reviewed under Act X. of 1877, s. 623.—*Eliza Smith v. The Secretary of State*, I. L. R., 3 Cal. 340.

It is competent to a party against whom an *ex-parte* decree has been made to apply for review of judgment.—*Bibi Mutto v. Ilahi Begam*, I. L. R., 6 All. 65.

A LOWER Court admitted a review of judgment on the ground that the decision of a Divisional Bench of the High Court, which it had followed in that judgment, had subsequently been overruled by the Full Bench. *Held* that the lower Court was not authorized to admit a review of judgment on such ground.—*Amrit Lal v. Madho Das*, I. L. R., 6 All. 292.

THE absence of a formal finding on an issue tried and decided by a High Court of first instance is not an error calling for review of judgment in the High Court. A party who not only had an opportunity of raising a question, but who did raise it in appeal, and on argument abandoned it, cannot, under ordinary circumstances, be allowed to agitate the question on review.—*Sabapathi v. Subráya Ramanadha*, I. L. R., 2 Mad. 58.

APPLICATIONS for the extension of the period for the submission of an award, and orders thereon, should be made in writing and recorded. When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of first instance.—*Monji Premji Set (Plaintiff), Appellant, v. Maliyakel Koyassan Koya Haji (Defendant), Respondent*, I. L. R., 3 Mad. 59.

FOR the purpose of setting aside a decree passed in pursuance of a compromise come to out of Court, there are two available modes of procedure—(1) by suit ; (2) by a review of the judgment sought to be set aside ; the latter being the more regular mode of procedure. *Lalji Sahu v. The Collector of Tirhoot* (6 B. L. R.,

649; *Mewah Lal Thakur v. Bhujun Jha* (13 B. L. R., Ap. 11); *Gilbert v. Endean* (L. R. 9 Ch. D. 259) followed.—*Aushootosh Chandra v. Taraprasanna Roy*, I. L. R., 10 Cal. 612.

THE notice-clause in s. 21, Act XI. of 1865, is applicable only to those cases where a new trial cannot be applied for within seven days after the judgment, in consequence of there being no sitting of the Court. Where the application is made within seven days, the notice is unnecessary. If the grounds upon which the new trial is moved are proper grounds for granting a review, the applicant is entitled to proceed under s. 623 of the Code of Civil Procedure without resorting to Act XI. of 1865.—*Ratan Kuishen Poddar v. Raghoo Nath Shaha*, I. L. R., 8 Cal. 287.

HAVING regard to the decisions in *Nánabhái v. Náthabhái* (9 Bom. H. C. Rep. 89) and *Narayan v. Dáuddhai* (9 Bom. H. C. Rep. 238), and the uniform practice in accordance with them which had since obtained, and the practical similarity on this point of Act X. of 1877, s. 623, and Act VIII. of 1859, s. 376 (on which the cases above-mentioned were decided), the High Court allowed the appellant to withdraw his second appeal, after it had been argued, though not decided, in order that he might apply to the lower Court for a review of its judgment on the ground of the discovery of new evidence. The appellant to pay the respondent's costs of appeal.—*Pandu v. Devji*, I. L. R., 7 Bom. 287.

ALTHOUGH the discovery of a new ruling may not entitle a party to a review of judgment, yet when a Court is satisfied that its judgment has proceeded upon an erroneous view of the law, the provisions of s. 623 of the Code of Civil Procedure allow a review of judgment. Where a decree-holder applied to the Court to transmit the decree to another Court for execution, and on a subsequent date paid into Court postage-stamps for the transmission of the records. *Held* that if when the postage-stamps were paid into Court an application was made to take some step in aid of execution, such application would be sufficient to give a new period of limitation.—*Vellaya v. Jaganatha*, I. L. R., 7 Mad. 307.

THE term "made" in s. 624 of the Civil Procedure Code does not mean "presented," but means and includes the hearing and determination of the application for review of judgment. *Held*, therefore, where an application for a review of judgment on the ground, not of the discovery of new and important matter or evidence as mentioned in s. 623 of the Civil Procedure Code, or of a clerical error apparent on the face of the decree, but on other grounds, was presented to the District Judge who delivered the judgment, and such Judge was transferred before he could entertain such application, that his successor was not competent to entertain it.—*Pancham v. Jhinguri* and another, I. L. R., 4 All. 278.

WHERE a Judge allowed a review of his predecessor's judgment on the sole ground that it appeared to him that the judgment of his predecessor had done injustice, *held* by the High Court (Morgan, C.J., and Innes, J.) that though the generality of the terms used in the sections of the Procedure Code, Act VIII. of 1859, relating to review of judgment, *viz.*, "other good and sufficient reason" (see 376) and "otherwise requisite for the ends of justice" (see 378), confers a wide jurisdiction, this jurisdiction could not be held to authorize a Judge to revise and reverse his predecessor's decree on the ground above-mentioned. If the review is asked for in reference to the conclusions of fact drawn from the evidence, it should not be granted simply upon the same evidence. *Reasut Hussani v. Hadjee Abdoolah* discussed.—*Raman v. Kurunatha Tharakan*, I. L. R., 2 Mad. 10.

A DIVISIONAL Bench of the High Court sitting as a Court of second appeal, being of opinion that the Court of first appeal had omitted to determine a certain issue of fact, determined such issue itself, and decided the appeal in accordance with its determination of such issue. An application for review of judgment was made on two grounds, *viz.*, (i.) that the Bench was wrong in thinking that such issue had not been determined by the Court of first appeal, and (ii.) that the Bench sitting as a Court of second appeal was not empowered to determine an issue of fact which the Court of first appeal had omitted to determine, but should have referred such issue to that Court for determination under s. 566 of the Civil Procedure Code. *Held*, that, looking to the provisions of that Code relating to review of judgment,

such application ought not to be allowed on the grounds mentioned, which virtually disclosed reasons for appeal from the judgment.—*Sheo Ratan Rai v. Lappu Kuar*, I. L. R., 5 All. 14.

624. Except upon the ground of the discovery of such new and im- M.S.C.O.

To whom applications for portaut matter or evidence as aforesaid, or of review may be made. some clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to any Judge other than the Judge who delivered it.

AN APPLICATION for review of judgment, upon a ground other than those mentioned in s. 624 of the Civil Procedure Code, if presented to the Judge who delivered it, and who thereupon directs notice to be given to the opposite party, may be heard and disposed of by his successor. *Pancham v. Jhinguri* (I L R., 4 All. 278, *infra*) dissented from.—*Karoo Singh v. Deo Narain Singh*, I. L. R., 10 Cal. 80.

A JUDGE of a Mufassal Small Cause Court has jurisdiction to direct a new trial of a case tried by his predecessor, s. 21 of Act XI. of 1865 not having been repealed by the Civil Procedure Code (Act X. of 1877). *Per* Garth, C.J.—The Judge, however, in dealing with applications for new trial under s. 21, should have regard to the rule laid down in s. 624 of the Code of Civil Procedure.—*Shumsher Ally v. Karkut Shah*, I. L. R., 6 Cal. 236.

THE term "made" in s. 624 of the Civil Procedure Code does not mean "presented," but means and includes the hearing and determination of the application for review of judgment. *Held*, therefore, where an application for a review of judgment on the ground, not of the discovery of new and important matter or evidence as mentioned in s. 623 of the Civil Procedure Code, or of a clerical error apparent on the face of the decree, but on other grounds, was presented to the District Judge who delivered the judgment, and such Judge was transferred before he could entertain such application, that his successor was not competent to entertain it.—*Pancham v. Jhinguri* and another, I. L. R., 4 All. 278. [Dissented from. See *supra*]

625. The rules hereinbefore contained as to the form of making M.S.C.O.

Form of applications for appeals shall apply, *mutatis mutandis*, to applications for review.

AN ORDER made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—*Adarji Edulji v. Manikji Edulji*, I. L. R., 4 Bom. 414.

Application when re-
jected.

626. If it appears to the Court that there M.S.C.O.
is not sufficient ground for a review, it shall reject the application.

If the Court be of opinion that the application for the review should be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion:

Proviso.

Provided that—

(a) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within

his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof of such allegation.

THE Judge of a Mufassal Small Cause Court may grant an application for a review of judgment under Act X. of 1877.—*Isan Chunder Banerjee v. Luchun Gope*, I. L. R., 5 Cal. 699.

AN APPLICATION under s. 311 of Act X. of 1877 to set aside a sale in execution of a decree having been made by the judgment-debtor, the Court executing the decree (Subordinate Judge) disallowed the objections, and passed an order confirming such sale. The judgment-debtor subsequently applied to the Subordinate Judge for a review of judgment. The Subordinate Judge, without recording his reasons for granting such application, irregularly proceeded at once to pass an order setting aside such sale, without cancelling the previous order confirming it. The auction-purchaser appealed to the District Judge. That officer, treating the appeal as one from an order granting an application for review of judgment, entertained it, and set aside the Subordinate Judge's second order. *Held* that the District Judge was not justified in entertaining such appeal, such order not being one granting an application for review, but one setting aside a sale, and as such not appealable. Before a review of judgment is granted, an order granting the application for review and the reasons for granting the same should be recorded.—*Bhairon Din Singh* (Judgment-debtor) *v.* *Ram Sahai* (Auction-purchaser), I. L. R., 3 All. 316.

M.S.C.O. 627. If the Judge or Judges, or any one of the Judges, who passed

Application for review in Court consisting of two or more Judges.

the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges, or any of them, shall hear the application, and no other Judge or Judges of the Court shall hear the same.

M.S.C.O. 628. If the application for a review be heard by more than one

Application when rejected.

Judge, and the Court be equally divided, the application shall be rejected.

If there be a majority, the decision shall be according to the opinion of the majority.

M.S.C.O. 629. An order of the Court for rejecting the application shall be

Order of rejection final.

Objections to admission.

final; but whenever such application is admitted, the admission may be objected to on the ground that it was—

(a) in contravention of the provisions of section 624,

(b) in contravention of the provisions of section 626, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

AN APPLICATION under s. 311 of Act X. of 1877 to set aside a sale in execution of decree having been made by the judgment-debtor, the Court executing the decree (Subordinate Judge) disallowed the objections, and passed an order confirming such sale. The judgment-debtor subsequently applied to the Subordinate Judge for a review of judgment. The Subordinate Judge, without recording his reasons for granting such application, irregularly proceeded at once to pass an order setting aside such sale, without cancelling the previous order confirming it. The auction-purchaser appealed to the District Judge. That officer, treating the appeal as one from an order granting an application for review of judgment, entertained it, and set aside the Subordinate Judge's second order. *Held* that the District Judge was not justified in entertaining such appeal, such order not being one granting an application for review, but one setting aside a sale, and as such not appealable. Before a review of judgment is granted, an order granting the application for review and the reasons for granting the same should be recorded.—*Bhairon Din Singh (Judgment-debtor) v. Ram Sahai (Auction-purchaser)*, I. L. R., 3 All. 316.

630. When an application for a review is granted, a note thereof M.S.C.C.

Registry of application granted, and order for re-hearing.

shall be made in the register, and the Court may at once re-hear the case, or make such order in regard to the re-hearing as it thinks fit.

WHERE a review of judgment is granted on a particular ground, the Court is not bound to rehear the whole case under s. 630 of the Civil Procedure Code: it is in the discretion of the Court to rehear the whole case, or only the particular point on which the review has been granted.—*Habibus Sahye v. Thakoor Purshad*, I. L. R., 9 Cal. 209.

PART IX.

CHAPTER XLVIII.

SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

631. This chapter applies only to High Courts which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).

Chapter to apply only to certain High Courts.

Application of Code to High Courts. 632. Except as provided in this chapter, the provisions of this Code apply to such High Courts.

High Court to record judgments according to its own rules.

633. The High Court shall take evidence, and record judgments and orders, in such manner as it by rule from time to time directs.

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be

Power to order execution of decree before ascertainment of costs, and

ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs ; and, as to so much thereof as relates to the costs, that the decree execution for costs subsequently. may be executed as soon as the amount of the costs shall be ascertained by taxation.

635. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its ordinary original civil jurisdiction, or to examine witnesses, except when the Court shall have, in the exercise of the power conferred by its charter, authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils, and attorneys.

636. Notices to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary, and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution, and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rule or order from time to time directs.

637. Any non-judicial or quasi-judicial act which this Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court, or by such other officer of the Court as the Court may direct to do such act.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

638. The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, sections 16, 17, and 19, sections 54, clauses (a) and (b), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum ;

and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Code not to affect High Court in exercise of insolvent jurisdiction.

Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

639. The High Court may, from time to time, frame forms for any proceeding in such Court, and may make rules as to the books, entries, and accounts to be kept by its officers.

Power to frame forms.

PART X.

CHAPTER XLIX.

MISCELLANEOUS.

640. Women, who, according to the customs and manners of the M.S.C.C. country, ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

Exemption of certain women from personal appearance.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process.

It is not necessary that a special order of Court should be made empowering an officer authorized to arrest a purda-nashin lady to enter the zanáná of the house in which she resides. Under s 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zanáná, in order to effect the arrest.—S. M. Kadumbinee Dossee v. S. M. Koylash-kaminee Dossee, I. L. R., 7 Cal. 19.

641. The Local Government may, by notification in the official M.S.C.C. Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

Local Government may exempt certain persons from personal appearance.

The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

Lists of names of persons exempted to be kept in Courts.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Costs of commission rendered necessary by claiming privilege.

642. No Judge, Magistrate, or other judicial officer, shall be liable M.S.C.C. to arrest under civil process while going to, presiding in, or returning from his Court.

Persons exempt from arrest under civil process.

And, except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents, and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

WHERE a native of Patna came from Calcutta to Madras on 24th October on account of a suit pending, in which he was plaintiff, and, the case having been adjourned on 27th October for seven weeks, remained in Madras on account of the suit, and was arrested on 10th November, held that he was privileged under s. 642 of the Code of Civil Procedure.—In the matter of Siva Bux Savuntharam, I. L. R., 4 Mad. 317.

WHERE a defendant in a suit in the High Court was arrested in execution of a decree of the Calcutta Court of Small Causes, while attending before an arbitrator appointed by the High Court to take a reference in the suit, it was held that he was privileged from such arrest while so attending, and that the High Court had power to direct his release from custody. Small Cause Courts in the presidency-towns are subject to the order and control of the High Court. In the matter of Omrital Dev (I. L. R., 1 Cal. 78) followed.—In the matter of Jugessur Roy, 5 Cal. Law Rep. 170.

THE general rule that a party to a suit is protected from arrest upon any civil process while going to the place of trial, while attending there for the purpose of the cause, and while returning home, applies to a defendant to a suit under the summary-procedure sections of Act X. of 1877, who has not obtained leave to appear and defend, and who, therefore, cannot be heard at the trial. Questions as to the privilege of exemption from arrest, in the case of persons arrested under writs issued from the Small Cause Court in Calcutta, must be governed by the English law, and not by s. 642 of the above Act. It is not a deviation sufficient to forfeit the privilege if the shortest road home is deviated from, and a less crowded and more convenient road adopted.—*In re Soorendro Nath Ray Chowdhry*, I. L. R., 5 Cal. 106.

A REVENUE Court is a "Court of Civil Judicature" within the meaning of s. 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court is punishable under that section. S. 612 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." *Held*, therefore, where a person, who had been convicted by a Magistrate, and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under s. 651 for escaping from "lawful custody."—*Empress of India v. Harakh Nath Singh*, I. L. R., 4 All. 27.

M.S.C.C.

643. When, in a case pending before any Court, there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 205, section 206, section 207, section 208, section 209, section 210, section 463, section 471, section 474, section 475, section 476, or section 477 of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge, and proceed with it according to law.

WHERE the provisions of s. 258 of the Code of Civil Procedure have not been complied with, a Civil Court is not debarred from admitting evidence that the decree has been satisfied out of Court, for the purpose of an investigation with a view to sending the judgment-debtor to a Magistrate under s. 643 of the Code of Civil Procedure.—*The Queen v. Mutturaman Chetti*, I. L. R., 4 Mad. 325.

M.S.C.C.

644. Subject to the power conferred on the High Court by section 639 and by the twenty-fourth and twenty-fifth schedule, of Victoria, chapter 104, section 15, the forms

set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

645. The language which, when this Code comes into force, is the **M.S.C.C.**
 Language of subordinate language of any Court subordinate to a High
 Courts. Court, shall continue to be the language of such
 subordinate Court until the Local Government otherwise orders;
 but it shall be lawful for the Local Government, from time to time,
 to declare what language shall be the language of every such Court.

645A. In any Admiralty or Vice-Admiralty cause of salvage, tow- **M.S.C.C.**
 Assessors in causes of age, or collision, the Court, whether it be
 salvage, &c. exercising its original or its appellate jurisdic-
 tion, may, if it thinks fit, and upon request of either party to such cause
 shall, summon to its assistance, in such manner as the Court may, by
 rule, from time to time, direct, two competent assessors; and such
 assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as
 the Court by rule prescribes. Such fees shall be paid by such of the
 parties as the Court in each may direct.

646. Whenever the Registrar of a Court of Small Causes has **M.S.C.C.**
 Power of Registrars of any doubt upon any question of law or usage
 Small Cause Courts to state having the force of law, or as to the construc-
 cases. tion of a document, which construction may
 affect the merits of the decision, he may state a case for the opinion of
 the Judge; and all the provisions herein contained relative to the stat-
 ing of a case by the Judge shall apply, *mutatis mutandis*, to the sta-
 ing of a case by the Registrar.

647. The procedure herein prescribed shall be followed, as far as it **M.S.C.C.**
 Miscellaneous proceed- can be made applicable, in all proceedings in any
 ings. Court of civil jurisdiction other than suits and
 appeals.

The High Court may, from time to time, make rules to provide for
 Admission of affidavits as the admission, in such proceedings, of affida-
 evidence. vits as evidence of the matters to which such
 affidavits respectively relate; and such rules, on being published in the
 local official Gazette, shall have the force of law.

AN APPEAL lies under s. 647 of the Code of Civil Procedure against an order
 of a District Court under s. 5, Act XX. of 1863.—Sultán Ackení Sahib and others
 (Petitioners), Appellants, v. Shaik Bava Malimiyyar (Respondent), I. L. R., 4 Mad.
 295.

THE procedure to be followed upon the sale of an under-tenure is that pre-
 scribed by the Civil Procedure Code. S. 311 does not apply only to sales made under
 chap. xix. of the Code, and the sale of an under-tenure may be set aside upon any
 of the grounds mentioned in that section.—Azizoonnessa Khatoon v. Gora Chand
 Dass, I. L. R., 7 Cal. 163.

THE provisions of the Letters Patent of 1865, cl. 36, that when the Judges of a
 Division Bench are equally divided in opinion, the opinion of the Senior Judge shall
 prevail, has been superseded by Act X. of 1877, s. 575 (which is extended to mis-
 cellaneous proceedings of the nature of appeals by s. 647 of that Act), so far as regards
 cases to which s. 575 is applicable.—Appaji Bhivrav v. Shivalal Khutchand, I. L. R.,
 3 Bom. 204 (F.B.).

FAILURE to comply with the provisions of ss. 182 and 183 of Act X of 1877 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under s. 91 of Act I. of 1872 (Indian Evidence Act), no other evidence of such deposition is admissible.—In the matter of the Petition of Mayadeb Gossami; *The Empress v. Mayadeb Gossami*, I. L. R., 6 Cal. 762

WHERE a judgment-debtor, pending the execution-proceedings, was granted permission to examine the state of the accounts, but failed to do so, and then made a fresh application to the Court for the same purpose after the execution-proceedings had been struck off, and the decree declared to be satisfied. *Held* that the question must be determined with reference to the provisions of s. 647 of the Civil Procedure Code, and the only course open to the judgment-debtor would have been to apply for a review of the order which declared the decree to be satisfied and struck off the execution-proceedings.—*Fakruddin Mahomed Ahsan v. Official Trustees of Bengal*, I. L. R., 10 Cal. 538.

SS. 25 and 647 of the Civil Procedure Code (Act X. of 1877) are both applicable to Courts of Small Causes in the Mufassal, and the former section is extended by the latter to execution proceedings in such Courts. Under s. 25 of the Civil Procedure Code (Act X. of 1877), the District Judge has power to withdraw an application for execution of a decree from a subordinate Court (such as a Mufassal Court of Small Causes) and to dispose of it himself, or to transfer it to another subordinate Court competent to deal with it. The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Act, has no bearing upon a question of jurisdiction.—*Balaji Rinchoddas as Manager of the Estate of Mohanlal Dalsukhram, Deceased (Applicant)*, I. L. R., 5 Bom. 680.

M.S.C.C. 648. Where any Court desires that any person shall be arrested, or that any property shall be attached, under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment;

and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under Chapter XXXIV.) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him.

A DECREE of a Small Cause Court can be executed by it at any place within the local limits of the District Court to which it is subordinate, as defined by Act X. of 1877, s. 2, without having recourse to the procedure under s. 648, which applies only to cases in which a decree passed in one district has to be executed in another district.—*Badan Bebajee v. Kala Chand Bebajee*, I. L. R., 4 Cal. 823.

ACT X. of 1877, s. 223, does not apply to a Small Causes Court, and s. 648 does not apply to a case in which the defendant resides within the same district in which the Court issuing a warrant is situate. Consequently, a Small Cause Court may issue a warrant for the arrest of a person residing in another district, but not

if he resides within the same district in which the Court is situate, but outside its local jurisdiction.—*Chunilál Sobhárám v. Purbhudás Kursandás*, I. L. R., 2 Bom. 560.

649. The rules contained in Chapter XIX. shall apply to the execution of any judicial process for the arrest of a person or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding. M.S.C.C.

Rules applicable to all civil process for arrest, sale, or payment.

In the same chapter, the expression "Court which passed a decree," or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit.

ALTHOUGH the High Court, in its appellate side, does not, as a general rule, execute its own decrees or orders, yet this circumstance in no way affects the vitality of its jurisdiction in this respect, and it cannot therefore be included among Courts which have ceased to have jurisdiction to execute decrees as specified under s. 649 of the Code of Civil Procedure.—*Hurro Pershad Roy v. Bhupendro Narain Dutt*, I. L. R., 6 Cal 201.

Per GARTH, C.J.—S. 649 of the Civil Procedure Code as amended by Act XII. of 1879, which explains the meaning of the expression, the "Court which passed the decree," does not exclude the Court which originally passed the decree as being a Court in which an application for execution should be made, but merely includes another Court. When, therefore, a Court which has passed a decree has ceased to have jurisdiction to execute it, the application for execution may be made either to that Court, although it has ceased to have jurisdiction to execute the decree, or to the Court which (if the suit wherein the decree was passed were instituted at the time of making application to execute it) would have jurisdiction to try the suit. *Per* Field, J.—A Court does not cease to be "the Court which passed the decree" merely by reason that the head-quarters of such Court are removed to another place, or merely because the local limits of the jurisdiction of such Court are altered. An application for the transfer of a decree under the provisions of s. 223 and the following section of Act X. of 1877 is a step in aid of the execution of the decree within the meaning of cl. 4, art. 179, sch. ii. of Act XV. of 1877.—*Latchman Pandeh v. Maddan Mohun Shye*, I. L. R., 6 Cal. 513.

650. The provisions of Chapters XIV. and XV., relating to witnesses, shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code. M.S.C.C.

Application of rules as to witnesses.

650A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India, and served as if they had been issued by such Courts: Provided that the Courts issuing such summonses have been established by the authority of the Governor-General in Council, or that the Governor-General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts. M.S.C.C.

Service of foreign summonses.

The Governor-General in Council may, by like notification, cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

M.S.C.C.

651. Whoever offers any resistance or illegal obstruction to the

Penalty for resisting apprehension or escaping from custody under Code or civil process.

lawful apprehension of himself under this Code, or under the warrant of any Civil or Revenue Court, or escapes or attempts to escape from any custody in which he is lawfully detained under this Code or under such warrant, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

A REVENUE Court is a "Court of Civil Judicature" within the meaning of s. 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court is punishable under that section. S. 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." *Held*, therefore, where a person, who had been convicted by a Magistrate, and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under s. 651 for escaping from "lawful custody."—*Empress of India v. Hurakh Nath Singh*, I. L. R., 4 All. 27.

THE apprehension of a judgment debtor in execution of a decree without the officer making the apprehension having the warrant of the Court executing the decree in his possession at the time of making the apprehension is illegal; and, therefore, in such a case the judgment-debtor does not render himself liable to punishment under s. 651 of the Civil Procedure Code, if he escapes from the custody of the officer making the apprehension. *Quære*—Whether a person convicted under s. 651 of the Civil Procedure Code of escaping from lawful custody, who is sentenced to one month's imprisonment only, can, under s. 588 (29) of that Code, appeal?—*Empress of India v. Anni Nath*, I. L. R., 5 All. 318.

M.S.C.C.

652. The High Court may, from time to time, make rules consistent

Power to make subsidiary rules of procedure.

with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

THE FIRST SCHEDULE.

(See section 3.)

ACTS RÉPEALED.

Number and year.	Subject or title.	Extent of repeal.
X. of 1877 ...	The Code of Civil Procedure ...	So much as has not been repealed.
XII. of 1879 ...	Amending Act X. of 1877, &c. ...	Sections one to one hundred and three (both inclusive).
VII. of 1880 ...	Merchant Shipping	Section eighty-five.

THE SECOND SCHEDULE.

*(See section 5.)**Chapter and Sections of this Code extending to Provincial Courts of Small Causes.*

PRELIMINARY : Sections 1, 2, 3, and 5.

- CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.
- CHAPTER II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).
- CHAPTER III.—Of Parties and their Appearances, Applications, and Acts.
- CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.
- CHAPTER V.—Of the Institution of Suits.
- CHAPTER VI.—Of the Issue and Service of Summons, except section 77.
- CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.
- CHAPTER VIII.—Section 111, Set-off.
- CHAPTER IX.—Of the examination of the Parties by the Court, except section 119.
- CHAPTER X.—Of Discovery and the Admission, &c., of Documents.
- CHAPTER XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.
- CHAPTER XIII.—Of Adjournments.
- CHAPTER XIV.—Of the Summoning and Attendance of Witnesses.
- CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 188 (both inclusive).
- CHAPTER XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214, and 215.
- CHAPTER XVIII.—Sections 220, 221, and 222, Of Costs.

CHAPTER	XIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 280 (both inclusive), 283, 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to rules under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive).
CHAPTER	XX.—Section 360, Power to invest certain Courts with Insolvency-jurisdiction.
CHAPTER	XXI.—Of the Death, Marriage, and Insolvency of Parties.
CHAPTER	XXII.—Of the Withdrawal and Adjustment of Suits.
CHAPTER	XXIII.—Of Payment into Court.
CHAPTER	XXIV.—Of requiring Security for Costs.
CHAPTER	XXV.—Of Commissions.
CHAPTER	XXVI.—Suits by Paupers.
CHAPTER	XXVII.—Suits by and against Government or Government Servants.
CHAPTER	XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.
CHAPTER	XXIX.—Suits by and against Corporations and Companies.
CHAPTER	XXX.—Suits by and against Trustees, Executors, and Administrators
CHAPTER	XXXI.—Suits by and against Minors and Persons of unsound Mind.
CHAPTER	XXXII.—Suits by and against Military Men.
CHAPTER	XXXIII.—Interpleader.
CHAPTER	XXXIV.—Of Arrest and Attachment before Judgment, except as regards immoveable property.
CHAPTER	XXXVI.—Appointment of Receivers.
CHAPTER	XXXVII.—Reference to Arbitration, section 506 to 526 (both inclusive).
CHAPTER	XXXVIII.—Of Proceedings on Agreement of Parties.
CHAPTER	XLVI.—Reference to and Revision by High Court.
CHAPTER	XLVII.—Of Review of Judgment.
CHAPTER	XLIX.—Miscellaneous, sections 640 to 647 (both inclusive), sections 649 to 652 (both inclusive).

THE THIRD SCHEDULE.

(See section 7.)

Bombay Enactments.

Bombay Regulation XXIX., 1827.

" " VII., 1830.

" " I., 1831.

" " XVI., 1831.

Act XIX. of 1835.

" XIII. of 1842.

THE FOURTH SCHEDULE.

(See section 644.)

FORMS OF PLEADINGS AND DECREES.

A.—PLAINTS. PART I.

No. 1.

FOR MONEY LENT.

IN THE COURT OF _____, AT _____

Civil Suit No. _____

A. B., of _____

against _____

C. D., of _____

A. B., the above-named plaintiff, states as follows :—

1. That on the _____ day of _____ 18____, at _____, he lent the defendant _____ rupees, repayable on demand [or on the _____ day of _____].
2. That the defendant has not paid the same, except _____ rupees, paid on the _____ day of _____ 18____.
- [If the plaintiff claims exemption from any law of limitation say :—
3. The plaintiff was a minor [or insane] from the _____ day of _____ till the _____ day of _____].
4. The plaintiff prays judgment for _____ rupees, with interest at _____ per cent. from the _____ day of _____ 18____.

[NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore, interest is not claimed, the statement may be omitted.]

No. 2.

FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(Title.)

A. B. and G. H., the above-named plaintiffs, state as follows :—

1. That on the _____ day of _____ 18____, at _____, the defendant received _____ rupees [or a cheque on the _____ Bank for _____ rupees] from one E. F. for the use of the plaintiffs
2. That the defendant has not paid [or delivered] the same accordingly.
3. The plaintiffs pray judgment for _____ rupees, with interest at _____ per cent. from the _____ day of _____ 18____.

No. 3.

FOR PRICE OF GOODS SOLD BY A FACTOR.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That on the _____ day of _____ 18____, at _____, he and E. F., since deceased, delivered to the defendant [one thousand barrels of flour, five hundred maunds of rice, or as the case may be] for sale upon commission.
2. That on the _____ day of _____ 18____, [or on some day unknown to the plaintiff, before the _____ day of _____ 18____], the defendant sold the said merchandise for _____ rupees.
3. That the commission and expenses of the defendant thereon amount to _____ rupees.
4. That on the _____ day of _____ 18____, the plaintiff demanded from the defendant the proceeds of the said merchandise.
5. That he has not paid the same.

[Demand of judgment.]

No. 4.

FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE
OF FACT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver
2. That the plaintiff procured the said bars, to be assayed by one *E. F.*, who was paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant rupees annas therefor.
3. That each of the said bars did contain only 1,200 tolas of fine silver.
4. That the defendant has not repaid the sum so overpaid.

[Demand of judgment.]

[NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs.]

No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , at the request [or by the authority] of the defendant, the plaintiff paid to one *E. F.* rupees.
2. That, in consideration thereof, the defendant promised [or became bound] to pay the same to the plaintiff, on demand [or as the case may be].
3. That [on the day of 18 , the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[Demand of judgment.]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication.]

No. 6.

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , *E. F.*, of , deceased, sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods].
2. That the defendant promised to pay rupees for the said goods on delivery [or on the day of some day before the plaint was filed].
3. That he has not paid the same.
4. That the said *E. F.* in his lifetime made his will, whereby he appointed the plaintiff executor thereof.
5. That on the day of 18 , the said *E. F.* died.
6. That on the day of probate of the said will was granted to the plaintiff by the Court of .
7. The plaintiff as executor as aforesaid [Demand of judgment.]

[NOTE.—If a day was fixed for payment, it should be stated as furnishing a date for the commencement of interest.]

THE FOURTH SCHEDULE

No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff sold and delivered to the defendant [*sundry articles of house-furniture*], but no express agreement was made as to the price.
2. That the same were reasonably worth rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

[NOTE.—The law implies a promise to pay so much as the goods are reasonably worth.]

No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff sold to the defendant [*one hundred barrels of flour*], and, at the request of the defendant, delivered the same to one E F
2. That the defendant promised to pay to the plaintiff rupees therefor.
3. That he has not paid the same.

[Demand of judgment.]

No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff furnished to [*Mary Jones*], the wife of [*James Jones*], deceased, at her request, sundry articles of [*food and clothing*], but no express agreement was made as to the price.
2. That the same were necessary for her.
3. That the same were reasonably worth rupees.
4. That the said *James Jones* refused to pay the same.
5. That the defendant is the executor of the last will of the said *James Jones*.

[Demand of judgment.]

No. 10.

FOR GOODS SOLD AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the plaintiff sold to E. F., of , deceased [*all the crops then growing on his farm in*].
2. That the said E. F., promised to pay the plaintiff rupees for the same.
3. That he did not pay the same.
4. That the defendant is administrator of the estate of the said E. F.

[Demand of judgment.]

No. 11.

FOR GOODS SOLD AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , E. F., of , sold to the defendant [*all the fruit growing in his orchard in*], but no express agreement was made as to the price.
2. That the same was reasonably worth rupees.
3. That the defendant has not paid the same.
4. That on the day of the High Court of Judicature at Fort William duly adjudged the said E. F. to be a lunatic, and appointed the plaintiff committee of his estate, with the usual powers for the management thereof.
5. The plaintiff as committee as aforesaid [*Demand of judgment*].

[NOTE.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following :—]

4. That on the day of the Civil Court of duly adjudged the said E. F. to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff manager of his estate.
5. The plaintiff as manager as aforesaid [*Demand of judgment*].

No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , E. F., of , agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that the said E. F. should pay for the same upon delivery thereof rupees.
2. That the plaintiff made the said goods, and on the day of 18 , offered to deliver the same to the said E. F., and has ever since been ready and willing so to do.
3. That the said E. F. has not accepted the said goods or paid for the same.
4. That on the day of 18 , the High Court of Judicature at Fort William duly adjudged the said E. F. to be a lunatic, and appointed the defendant committee of his estate.
5. The plaintiff prays judgment for rupees with interest from the day of at the rate of per cent per annum, to be paid out of the estate of the said E. F. in the hands of the defendant.

No. 13.

FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff put up at auction sundry [*articles of merchandise*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale should be re-sold by auction, on his account, of which condition the defendant had notice.
2. That the defendant purchased [*one crate of crockery*] at the said auction at the price of rupees.
3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [*ten days*] thereafter, of which the defendant had notice.
4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.
5. That on the day of 18 , at , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for rupees.

6. That the expenses attendant upon such re-sale amounted to rupees.
 7. That the defendant has not paid the deficiency thus arising, amounting to rupees.

[Demand of judgment.]

[NOTE to § 4.—Unless the seller agreed to deliver, the purchaser must fetch the goods. See Act IX. of 1872, sec. 93.]

No. 14.

FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff sold [and conveyed] to the defendant [the house and compound, No. , in the city of , or a farm known as , in or a piece of land lying, &c.].
2. That the defendant promised to pay the plaintiff rupees for the said [house and compound, or farm, or land].
3. That he has not paid the same.

[Demand of judgment.]

[NOTE.—Where there has been no actual conveyance, say in § 1, “sold to the defendant the house, &c., and placed him in possession of the same.”]

No. 15.

FOR THE PURCHASE-MONEY OF IMMOVEABLE PROPERTY CONTRACTED TO BE SOLD,
 BUT NOT CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house, No. , in the town of , or one hundred bighás of land in , bounded by the East Indian railroad, and by the other lands of the plaintiff] for rupees.
- 2 That on the day of 18 , at , the plaintiff tendered [or was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.
3. That the defendant has not paid the said sum.

[Demand of judgment.]

No. 16.

FOR SERVICES AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant [hired plaintiff as a clerk, at the salary of rupees per year].
2. That from the [said day], until the day of 18 , the plaintiff served the defendant as his [clerk].
3. That the defendant has not paid the said salary.

[Demand of judgment.]

No. 17.

FOR SERVICES AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That between the day of 18 , and the day of 18 , at , plaintiff [executed sundry drawings, designs, and diagrams] for the

defendant, at his request ; but no express agreement was made as to the sum to be paid for such services.

- 2 That the said services were reasonably worth rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 18.

FOR SERVICES AND MATERIALS AT A FIXED PRICE.

(Title.)

A. B, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff [furnished the paper for and printed one thousand copies of a book called] for the defendant, at his request [and delivered the same to him].
2. That the defendant promised to pay rupees therefor.
3. That he has not paid the same.

[Demand of judgment.]

No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff built a house known as No. , in , and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the price to be paid for such work and materials.
2. That the said work and materials were reasonably worth rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 20.

FOR RENT RESERVED IN A LEASE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed.

[Or state the substance of the contract.]

2. That the defendant has not paid the rent of the [month] ending on the day of 18 , amounting to rupees.

[Demand of judgment.]

Another Form.

1. That the plaintiff let to the defendant a house, No. 27, Chowringhee, for seven years, to hold from the day of 18 , at rupees a year, payable quarterly.

2. That of such rent quarters are due and unpaid.

[Demand of judgment.]

No. 21.

FOR USE AND OCCUPATION AT A FIXED RENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant hired from the plaintiff, [the house No. Street], at the rent of rupees, payable on the first days of .

THE FOURTH SCHEDULE.

ix

2. That the defendant occupied the said premises from the day of 18 , to the day of 18 .
3. That the defendant has not paid rupees, being the part of said rent due on the first day of 18 .

[Demand of judgment.]

No 22.

FOR USE AND OCCUPATION AT A REASONABLE RENT.

(Title.)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows :—

1. That the defendant occupied [the house, No. , Street] by permission of the said X. Y., from the day of 18 , until the day of 18 , and no agreement was made as to payment for the use of the said premises.
2. That the use of the said premises for the said period was reasonably worth rupees.
3. That the defendant has not paid the same.
4. The plaintiff as such executor as aforesaid prays judgment for rupees.

No. 23.

FOR BOARD AND LODGING.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That from the day of 18 , until the day of 18 , the defendant occupied certain rooms in the house [No. , Street], by permission of the plaintiff, and was furnished by the plaintiff, at his request with meat, drink, attendance, and other necessaries.
2. That, in consideration thereof, the defendant promised to pay [or that no agreement was made as to payment for such meat, drink, attendance, or necessaries, but the same were reasonably worth] the sum of rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 24.

FOR FREIGHT OF GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff transported in [his barge, or otherwise] [one thousand barrels of flour or sundry goods] from to , at the request of the defendant.
2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon [or that no agreement was made as to payment for such transportation, but such transportation was reasonably worth rupees].
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 25.

FOR PASSAGE-MONEY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff conveyed the defendant [in his ship, called the] from to at his request.

2. That the defendant promised to pay the plaintiff rupees therefor.
 [Or that no agreement was made as to the price of the said passage, but the said passage was reasonably worth rupees.]
 3. That the defendant has not paid the same.

[Demand of judgment.]

No. 26.

ON AN AWARD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the plaintiff and defendant having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of *E. F.* and *G. H.*, as arbitrators [or entered into an agreement, a copy of which is hereto annexed].
2. That on the day of 18, at , the said arbitrators awarded that the defendant should [pay the plaintiff rupees].
3. That the defendant has not paid the same.

[Demand of judgment.]

[NOTE.—This will apply where the agreement to refer is not filed in Court.]

No. 27.

ON A FOREIGN JUDGMENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , in the State [or Kingdom] of , the Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.
2. That the defendant has not paid the same.

[Demand of judgment.]

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant by his bond became bound to the plaintiff in the sum of rupees to be paid by the defendant to the plaintiff, subject to a condition that, if the defendant should pay to the plaintiff rupees half-yearly on the day of and the day of in every year during the life of the plaintiff, the said bond should be void.
2. That afterwards, on the day of 18, the sum of rupees for of the said half-yearly payments of the said annuity became due to the plaintiff, and is still unpaid.

[Demand of judgment.]

No. 29.

PAYEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff rupees [days] after date.

2. That he has not paid the same [except rupees, paid on the day of 18].

[Demand of judgment.]

[NOTE.—Where the note is payable after notice, for paragraphs 1 and 2 substitute :—]

1. That on the day of 18 , at , the defendant, by his promissory note, promised to pay to the plaintiff rupees months after notice.

2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.

3. That the said time for payment has elapsed, but the defendant has not paid the same.

[Where the note is payable at a particular place, say—]

1. That on the day of 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff [at Messrs. A. and Co.'s, Madras] rupees months after date.

2. That the said note was duly presented for payment [at Messrs. A. and Co.'s] aforesaid, but has not been paid.

Written Statement of the Defendant.

In the Court, &c.

C. D., the above-named defendant, states as follows :—

1. The defendant made the note sued upon under the following circumstances : The plaintiff and defendant had for some years been in partnership as indigo manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership-assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership-books, and enquire into the state of the partnership-assets and liabilities ; and he did accordingly examine the said books and make the said enquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 1,00,000, and that the liabilities of the firm were less than Rs. 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

No. 30.

FIRST INDORSEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the order of E. F., [or to E. F. or order] rupees [days after date].

2. That the said E. F. indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[Demand of judgment.]

No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. [As in the last preceding form.]

2. That the same was, by the indorsement of the said E. F. and of G. H. and I. J. [or and others] transferred to the plaintiff.

3. That the defendant has not paid the same.

[Demand of judgment.]

No. 32.

FIRST INDORSEE AGAINST FIRST INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That *E. F.*, on the day of 18 , at , by his promissory note, now overdue, promised to pay to the defendant or order rupees months after date.
2. That the defendant indorsed the same to the plaintiff.
3. That on the day of 18 , the same was duly presented for payment, but was not paid.

[Or state facts excusing want of presentment.]

4. That the defendant had notice thereof.
5. That he has not paid the same.

[Demand of judgment.]

No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER ; THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one *E. F.* a promissory note, now overdue, made [*or* purporting to have been made] by one *G. H.*, on the day of 18 , at , to the order of the defendant, for the sum of rupees [*payable* days after date].
- 2 That the same was, by the indorsement of the said *E. F.* [*and others*], transferred to the plaintiff. [*Or that the said E. F. indorsed the same to the plaintiff.*]

3, 4, and 5. [*Same as 3, 4, and 5 of the last preceding form.*]*[Demand of judgment.]*

No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to him a promissory note, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees [*payable* days after date], and indorsed by the said *G. H.* to the defendant.

2, 3, and 4. [*Same as in 3, 4, and 5 in Form No. 33.*]*[Demand of judgment.]*

No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That a promissory note, now overdue, made, [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees [*payable* days after date], and indorsed by the said *G. H.* to the defendant, was, by the indorsement of the defendant [*and others*], transferred to the plaintiff.

2, 3, and 4. [*As in No. 33.*]*[Demand of judgment.]*

No. 36.

SUBSEQUENT INDORSEE AGAINST MAKER, AND FIRST AND SECOND INDORSER.
IN THE COURT OF AT .

Civil Suit No.

*A. B., of
against
C. D., of
E. F., of
and
G. H., of*

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*, rupees [months after date].
2. That the said *E. F.* indorsed the same to the defendant, *G. H.*, who indorsed it to the plaintiff.
3. That on the day of 18 , the same was presented [*or state facts excusing want of presentment*] to the said *C. D.* for payment, but was not paid.
4. That the said *E. F.* and *G. H.* had notice thereof.
5. That they have not paid the same.

[*Demand of judgment.*]

No. 37.

DRAWER AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , by his bill of exchange, now overdue, the plaintiff required the defendant to pay him rupees [days after date, or sight, thereof].
2. That the defendant accepted the said bill. [*If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.*]
3. That he has not paid the same.
4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[*Demand of judgment.*]

[NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say—]

1. That on, &c., at, &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to *E. F.* or order rupees months after date.
2. That the plaintiff delivered the said bill to the said *E. F.* on .
3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made [*or purporting to have been made*] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the plaintiff rupees after sight thereof.
2. That he has not paid the same.

[*Demand of judgment.*]

No. 39.

FIRST INDORSEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, the defendant accepted a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18, at , requiring the defendant to pay to the order of one *G. H.* rupees after sight thereof.
2. That the said *G. H.* indorsed the same to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment]

No. 40.

SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. [*As in the last preceding form, to the end of article 1.*]
2. That by the indorsement of the said *G. H.* [and others], the same was transferred to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant, by his bill of exchange, directed to *E. F.*, required the said *E. F.*, to pay to the plaintiff rupees [days after sight].
2. That on the day of 18, the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18, at , requiring one *G. H.* to pay to the order of the defendant rupees [days] after sight [or after date, or at sight] thereof, [and accepted by the said *G. H.* on the day of 18].
2. That on the day of 18, the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER ; THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one *E. F.* a bill of exchange, now overdue, made [or purporting to have been made] by one *G. H.*, on the day of 18,

at , requiring one *I. J.* to pay to the order of the defendant
 rupees days after sight thereof [or otherwise], and accepted by the said *I. J.* on
 the day of 18 . [This clause may be omitted, if not according to the
 fact.]

2. That the same was, by the indorsement of the said *E. F.* [and others],
 transferred to the plaintiff.

3. That on the day of 18 the same was presented to the said *I. J.*
 for payment, and was dishonoured.

4. That the defendant had due notice thereof.

5. That he has not paid the same.

[Demand of judgment.]

No. 44.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue,
 made [or purporting to have been made] by one *E. F.*, on the day of 18
 , at , requiring one *G. H.* to pay to the order of *I. J.* rupees
 days after sight thereof [or otherwise], [accepted by the said *G. H.*], and indors-
 ed by the said *I. J.* to the defendant.

2. That on the day of 18 , the same was presented to the said *G. H.*
 for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[Demand of judgment.]

No. 45.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That a bill of exchange, now overdue, made [or purporting to have been
 made] by one *E. F.*, on the day of 18 , at , requiring one
G. H. to pay to the order of one *I. J.* rupees days after sight thereof
 [or otherwise], [accepted by the said *G. H.*], and indorsed by the said *I. J.* to the
 defendant, was, by the indorsement of the defendant [and others], transferred to
 the plaintiff.

2. That on the day of 18 , the same was presented to the said *G. H.*
 for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[Demand of judgment.]

No. 46.

INDORSEE AGAINST DRAWER, ACCEPTOR, AND INDORSER.

IN THE COURT OF , AT

Civil Suit No.

A. B., of
 against

C. D., of

E. F., of

and

G. H., of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant *C. D.*, by his
 bill of exchange, now overdue, directed to the defendant *E. F.*, required the said

E. F., to pay to the order of the defendant *G. H.*, rupees [days after sight thereof].

2. That on the day of 18 , the said *E. F.* accepted the same.
3. That the said *G. H.* indorsed the same to the plaintiff.
4. That on the day of 18 , the same was presented to the said *E. F.* for payment, and was dishonoured.
5. That the other defendants had due notice thereof.
6. That they have not paid the same.

[*Demand of judgment.*]

No. 47.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his bill of exchange, drawn in Calcutta, required one *E. F.* to pay to the plaintiff in [London] pounds sterling [sixty days] after sight thereof.
 2. That on the day of 18 , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.
 3. That the defendant had due notice thereof.
 4. That he has not paid the same.
 5. That the value of pounds sterling, at the time of the service of notice of protest on the defendant, was rupees annas.]
- Wherefore the plaintiff demands judgment against the defendant for rupees, with [ten per centum] compensation and interest from the day of 18 .

No. 48.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , one *E. F.*, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff rupees after date [or days after sight] thereof.
2. That on the day of 18 , the defendant accepted the said bill.
3. That he has not paid the same.

[*Demand of judgment.*]

No. 49.

ON A MARINE [OPEN] POLICY ON VESSEL LOST BY PERILS OF THE SEA, &c.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff was the owner of [or had an interest in] the ship at the time of her loss, as hereinafter mentioned.
2. That on the day of 18 , at , the defendants, in consideration of rupees to them paid [or which the plaintiff then promised to pay], executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed ; [or whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from to , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees].
3. That the said ship, while proceeding on the voyage mentioned in the said policy, was, on the day of 18 , totally lost by the perils of the sea [or otherwise].
4. That the plaintiff's loss thereby was rupees.

5 That on the day of 18 , he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 50.

ON CARGO, LOST BY FIRE :—VALUED POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [*or* had an interest in] [one hundred bales of cotton] on board the ship at the time of her loss as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees which the plaintiff then paid [*or* promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed ; [*or* whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; *or*, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods].

3. That on the day of 18 , at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (*or* as the case may be).

4, 5, and 6. [*As in paragraphs 4, 5, and 6, of the last preceding form.*]

[*Demand of judgment.*]

No. 51.

ON FREIGHT :—VALUED POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff had an interest in the freight to be earned by the ship on her voyage from to , at the time of her loss, as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.

2. That on the day of 18 , at , the defendant, in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [*or state its tenor, as before*].

3. That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18 , totally lost by [the perils of the sea].

4. That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6. [*As in Form No. 49*].

[*Demand of judgment.*]

No. 52.

FOR A LOSS BY GENERAL AVERAGE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [*or* had an interest in] [one hundred bales of cotton] shipped on board a vessel called the *Y Z*, from to , at the time of the loss hereafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [*or state its tenor, as before*].

3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea, that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[Demand of judgment.]

No. 53.

FOR A PARTICULAR AVERAGE LOSS.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1 and 2. [*As in the last preceding form.*]

3. That on the day of 18 , while on the high seas, the sea-water broke into the said ship, and damaged the said [cotton] to the amount of rupees.

4 and 5. [*As in paragraphs 5 and 6 of the last preceding form.*]

[Demand of judgment.]

No. 54.

ON A FIRE INSURANCE POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff [was the owner of, or] had an interest in a [dwelling-house known as No. , Street, in the city of], at the time of its destruction [or injury] by fire as hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [to them paid], the defendants executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [*or state its tenor*].

3. That on the day of 18 , the said [dwelling-house] was totally destroyed [or greatly damaged] by fire.

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[Demand of judgment.]

No. 55.

AGAINST SURETY FOR PAYMENT OF RENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , one E. F. hired from the plaintiff, for the term of years, the [house No. , Street], at the annual rent of rupees, payable [monthly].

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said E. F., to guarantee the punctual payment of the said rent.

3. That the rent aforesaid for the month of 18 , amounting to rupees, has not been paid.

[If, by the terms of the agreement, notice is required to be given to the surety add :—]

4. That on the day of 18 , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.
5. That he has not paid the same.

[Demand of judgment.]

B.—PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT.

No. 56.

FOR BREACH OF AGREEMENT TO CONVEY LAND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.
[Or, That on, &c., the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of [ten thousand] rupees payable as hereinafter mentioned, he would, on the day of 18 , at , execute to the plaintiff a sufficient conveyance of [the house No. , Street, in the city of , free from all incumbrances ; and the plaintiff agreed to pay [ten thousand] rupees for the same on delivery thereof.]
2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant, and tendered rupees to the defendant [or that all conditions were fulfilled, and all things happened, and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part].
3. That the defendant has not executed any conveyance of the said property to the plaintiff [or that there is a mortgage upon the said property, made by to , for rupees, registered in the office of , on the day of 18 , and still unsatisfied, or any other defect of title].
4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.
5. The plaintiff prays judgment for rupees compensation.

No. 57.

FOR BREACH OF AGREEMENT TO PURCHASE LAND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.
[Or, That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff, forty bighás of land in the village of for rupees.]
2. That on the day of 18 , at , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [or was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument], on the payment by the defendant of the said sum.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 58.

Another Form.

FOR NOT COMPLETING A PURCHASE OF IMMOVEABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That by an agreement dated the day of 18 , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of rupees, upon the terms and conditions following (that is to say)—

(a) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 18 , on which day the said purchase should be completed.

(b) That the plaintiff should deduce and make a good title to the said premises on or before the day of 18 , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened, and all times elapsed, necessary to entitle, the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[Demand of judgment.]

No 59.

FOR NOT DELIVERING GOODS SOLD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the day of 18], and that the plaintiff should pay therefor rupees on delivery.

2. That on the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[Demand of judgment.]

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his services rupees [monthly].

2. That on the day of 18 , the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3. That on the day of 18 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[Demand of judgment.]

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER
TOOK EFFECT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. [As in the last preceding form.]
2. That on the day of 18 , at , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.
3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[Demand of judgment.]

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] compensation of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].
2. That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the day of 18 , offered so to do].
3. That the defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 18 , he refused to serve the plaintiff as aforesaid.

[Demand of judgment.]

No. 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed.
[Or state the tenor of the contract.]
- [2. That the plaintiff duly performed all the conditions of the said agreement on his part.]
3. That the defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner].

[Demand of judgment.]

No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN APPRENTICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into an agreement, under his hand and seal,* a copy of which is hereto annexed.

[Or state the tenor of the contract.]

2. That, after the making of the said agreement, the plaintiff received the said [apprentice] into his service as such apprentice for the term aforesaid, and has always performed, and been ready and willing to perform, all things in the said agreement on his part to be performed.

3. That on the day of 18 , the said [apprentice] wilfully absented himself from the service of the plaintiff, and continues so to do.

[Demand of judgment.]

* The form given in Act XIX. of 1850 requires the seal of the father or guardian.

No. 65.

BY THE APPRENTICE AGAINST THE MASTER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into an agreement with the plaintiff and his [father], *E. F.*, under their hands and seals, a copy of which is hereto annexed.

2. That, after the making of the said agreement, the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not [instructed the plaintiff in the business of , or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment].

[Demand of judgment.]

No. 66.

ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff employed one *E. F.* as a clerk.

2. That on the day of 18 , at , the defendant agreed with the plaintiff, that if the said *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees.

[Or, 2. That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of rupees, conditioned that if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void, but not otherwise.]

[Or, 2. That at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.]

3. That between the day of 18 , and the day of 18 , the said *E. F.* received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[Demand of judgment.]

No 67.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by an instrument in writing, let to the plaintiff [the house No. , Street] for the term of years, contracting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the day of , during the said term, one *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal].

[*Demand of judgment.*]

No. 68.

FOR BREACH OF WARRANTY OF MOVEABLES.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[*Demand of judgment.*]

No. 69.

ON AN AGREEMENT OF INDEMNITY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the plaintiff and defendant, being partners in trade under the firm of *A. B.* and *C. D.*, dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership-property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That on the day of 18, [a judgment was recovered against the plaintiff and defendant by one *E. F.*, in the High Court of Judicature at upon a debt due from the said firm to the said *E. F.*, and on the day of 18], the plaintiff paid rupees [in satisfaction of the same].

4. That the defendant has not paid the same to the plaintiff.

[*Demand of judgment.*]

No. 70.

BY SHIP-OWNER AGAINST FREIGHTOR FOR NOT LOADING.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[*Or*, 1. That on , at , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship at on, the day of 18, five hundred tons of merchandise, which she should carry to , and there deliver, on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at rupees per day].

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered to receive [the said merchandise, or the merchandise mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No. 71.

FOR TRESPASS ON LAND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered upon certain land of plaintiff, known as [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same.]

[Demand of judgment.]

No. 72.

FOR TRESPASS IN ENTERING A DWELLING-HOUSE.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant entered a dwelling-house of the plaintiff called , and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took, and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[Demand of judgment.]

No. 73.

FOR TRESPASS ON MOVEABLES.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [or seized and took the plaintiff's goods, that is to say, iron, rice, and household furniture, or as the case may be, and carried away the same and disposed of them to his own use] :

or seized and took the plaintiff's cows and bullocks, and impounded them, and kept them impounded for a long time.

2. That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him : and was also prevented from selling them at fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff [otherwise state the injury according to the facts].

[Demand of judgment.]

No. 74.

FOR THE CONVERSION OF MOVEABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff was in possession of certain goods described in the schedule hereto annexed [or of one thousand barrels of flour].

2. That on that day, at , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

[Demand of judgment.]

The Schedule.

No. 75

AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, in consideration of the payment to him of rupees [or rupees per barrel, per month, &c.], agreed to keep in his godown [one hundred barrels of flour], and to deliver the same to the plaintiff on payment of the said sum

2. That thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour].

3 That on the day of 18 , the plaintiff requested the defendant to deliver the said goods, and tendered him rupees [or the full amount of storage due thereon], but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said goods to E. F., and the same are lost to the plaintiff.

[Demand of judgment.]

No 76.

FOR PROCURING PROPERTY BY FRAUD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of rupees.

3. That the said representations were false [or state the particular falsehoods], and were then known by the defendant to be so.

4 That the defendant has not paid for the said goods. [Or, if the goods were not delivered, That the plaintiff, in preparing and shipping the said goods and procuring their restoration expended rupees.]

[Demand of judgment.]

No. 77.

FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant represented to the plaintiff that one E. F. was solvent and in good credit, and worth rupees over all his liabilities [or that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].

2. That the plaintiff was thereby induced to sell to the said E. F. [rice] of the value of rupees [on month's credit.

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or to deceive and injure the plaintiff].

4. That the said E. F. [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice and the plaintiff has wholly lost the same by reason of the premises.

[Demand of judgment]

No. 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in , and of a well therein, and of water

in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2. That on the day of 18 , the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

[Demand of judgment.]

No. 79.

FOR CARRYING ON A NOXIOUS MANUFACTURE.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called situate in

2. That ever since the day of 18 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage, and crops of the plaintiff growing on the said lands, were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4. That by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep, and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

[Demand of judgment.]

No. 80.

FOR OBSTRUCTING A WAY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2. That he was entitled to a right of way from the said [house] over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, or on foot] at all times of the year.

3. That on the day of 18 , defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the said way, [and has ever since wrongfully obstructed the same].

4. [State special damage, if any.]

[Demand of judgment.]

Another Form.

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.

2. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or, into the said trench], and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[Demand of judgment.]

No. 81.

FOR DIVERTING A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the _____, in the village of _____, district of _____.

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. That on the _____ day of _____ 18____, the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. That, by reason thereof, the plaintiff has been unable to grind more than _____ sacks per day, whereas, before the said diversion of water, he was able to grind _____ sacks per day.

[Demand of judgment.]

No. 82.

FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands, situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. That on the _____ day of _____ the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[Demand of judgment.]

No. 83.

FOR WASTE BY A LESSEE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the _____ day of _____ 18____, the defendant hired from him [the house No. _____, Street] for the term of _____.

2. That the defendant occupied the same under such hiring.

3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors; or otherwise specify the injuries as far as possible].

The plaintiff prays judgment for _____ rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

(Title)

A. B., the above-named plaintiff, states as follows :—

That on the _____ day of _____ 18____, at _____, the defendant assaulted and beat him.

The plaintiff prays judgment for _____ rupees compensation.

No. 85.

FOR ASSAULT AND BATTERY WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the _____ day of _____ 18____, at _____, the defendant assaulted and beat him until he became insensible.

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay rupees for medical attendance, and has been ever since disabled [from using his right arm]. [*Or otherwise state the damage, as the case may be.*]

[*Demand of judgment.*]

No. 86.

FOR ASSAULT AND FALSE IMPRISONMENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant assaulted the plaintiff and imprisoned him for days [or hours] ; [*state special damage, if any, thus :—*]

2 That by reason thereof the plaintiff suffered great pain of body and mind, and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [*or otherwise, as the case may be.*]

[*Demand of judgment.*]

No 87.

FOR INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendants were common carriers of passengers by railway between and .

2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3. That while he was such passenger, at [or near the station of ; or between the stations of and], a collision occurred on the said railway, caused by the negligence and unskillfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[*Demand of judgment.*]

[*Or thus :—*2. That on that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, &c., as in § 3.]

No. 88.

FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is a shoemaker, carrying on business at . The defendant is a merchant of .

2. On the [23rd May, 1875], the plaintiff was walking eastward along Chowringhee, in the city of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims rupees damages.

(Title.)

Written Statement of Defendant.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. *E. F.* and *G. H.*] of Street, Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs. *E. F.* and *G. H.*]

2. The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaint.

No. 89.

FOR LIBEL ; THE WORDS BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant published in a newspaper, called the [or in a letter addressed to *E. F.*], the following words concerning the plaintiff :—

[*Set forth the words used.*]

2. That the said publication was false and malicious.

[*Demand of judgment*]

NOTE.—If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus :—“Which said words, being translated into the language, have the meaning and effect following, and were so understood by the persons to whom they were so published, that is to say [*here set out a literal translation of the libel in the language of the Court*].”

No. 90.

FOR LIBEL ; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff [is, and] was, on and before the day of 18 , a merchant doing business in the city of .

2. That on the day of 18 , at , the defendant published in a newspaper, called the [or in a letter addressed to *E. F.*, or otherwise how published], the following words concerning the plaintiff :—

[“*A. B.* of this city has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address.”]

3. That the defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them].

4. That the said publication was false and malicious.

[*Demand of judgment.*]

No. 91.

FOR SLANDER ; THE WORDS BEING ACTIONABLE IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant falsely and maliciously spoke, in the hearing of *E. F.* [or sundry persons], the following words concerning the plaintiff : [“ He is a thief ”].

2 That, in consequence of the said words, the plaintiff lost his situation as in the employ of .

[Demand of judgment.]

No. 92.

FOR SLANDER ; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. The on the day of 18 , at , the defendant falsely and maliciously said to one *E. F.* concerning the plaintiff : [“ He is a young man of remarkably easy conscience ”]

2. That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3. That in consequence of the said words [the said *E. F.* refused to employ the plaintiff as a clerk].

[Demand of judgment.]

No. 93.

FOR MALICIOUS PROSECUTION.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant obtained a warrant of arrest from [a magistrate of the said city, or, as the case may be] on a charge of , and the plaintiff was arrested thereon, and imprisoned for [days or hours, and gave bail in the sum of rupees to obtain his release].

2. That, in so doing, the defendant acted maliciously and without reasonable or probable cause.

3. That on the day of 18 , the said magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him ; or, that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E. F.*, or, that by reason of the premises the plaintiff suffered pain of body, and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[Demand of judgment.]

D.—PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVEABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That *X. Y.* was the absolute owner [of the estate, or the share of the estate, called , situate in the district of , the Government-revenue of which is rupees , and the estimated value rupees, or of the house No. , Street, in the town of Calcutta, the estimated value of which is rupees].

2. That on the day of 18 , Z illegally dispossessed the said X. Y. of the said estate [or share, or house].

3. That the said X. Y. has since died intestate, leaving the plaintiff, the said A. B. his heir him surviving.

4. That the defendant withholds the possession of the estate [or share or house] from the plaintiff.

The plaintiff prays judgment :

(1) for the possession of the said premises ;

(2) for rupees compensation for withholding the same.

Another Form.

A. B., the above-named plaintiff, states as follows :—

1. On the day of , the plaintiff, by an instrument in writing, let to the defendant a house and premises [No. 52, Russell Street, in the] for a term of five years from the day of , at the monthly rent of 300 rupees,

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the day of 18 , a month's rent became due, and on the day of 18 , another month's rent became due ; on the day of 18 , both had been in arrear for twenty-one days, and both are still due.

5. On the same day of 18 , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims :

(1) possession of the said house and premises ;

(2) rupees for arrears of rent ;

(3) rupees compensation for the defendant's breach of his covenant to repair ;

(4) rupees for the occupation of the house and premises from the day of 18 , to the day of recovering possession.

No. 95.

BY THE TENANT.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That one E. F. is the absolute owner of [a piece of land in the town of Calcutta , bounded as follows :], the estimated value of which is rupees

2. That on the day of 18 , the said E. F. let the said premises to the plaintiff for years, from .

3. That the defendant withholds the possession thereof from the plaintiff.

[Demand of judgment.]

No. 96.

FOR MOVEABLE PROPERTY WRONGFULLY TAKEN.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned [or was possessed of] one hundred barrels of flour, the estimated value of which is rupees.

2. That on that day, at , the defendant took the same.

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2) for rupees compensation for the detention thereof.

No. 97.

FOR MOVEABLES WRONGFULLY DETAINED.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods*], the estimated value of which is rupees.

2 That from that day until the commencement of this suit, the defendant has detained the same from the plaintiff.

3. That before the commencement of this suit, to wit, on the day of 18 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2) for rupees compensation for the detention thereof.

The Schedule.

No. 98.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant [*C. D.*], for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell and deliver to the said *C. D.* [one hundred boxes of tea], the estimated value of which is rupees.

3. That the said representations were false, and were then known by the said *C. D.* to be so. [*Or, That at the time of making the said representations, the said C. D. was insolvent, and knew himself to be so*]

4. That the said *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration [*or who had notice of the falsity of the representation*].

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2) for rupees compensation for the detention thereof.

E.—PLAINTS IN SUITS FOR SPECIAL RELIEF.

No. 99.

FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained [ten bighás].

2. That the plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. That on the day of 18 , the plaintiff paid the defendant rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only [five bighás].

The plaintiff prays judgment :

(1) for rupees, with interest from the day of 18 ;

(2), that the said agreement of purchase be delivered up and cancelled.

No. 100.

FOR AN INJUNCTION RESTRAINING WASTE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is the absolute owner of [*describe the property*].
 2. That the defendant is in possession of the same under a lease from the plaintiff.
 3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.
- The plaintiff prays judgment, that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation might also be prayed*]

No. 101.

FOR ABATEMENT OF A NUISANCE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. , Street, Calcutta].
 2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].
 3. That on the day of 18 , the defendant erected upon his said plot a slaughter-house, and still maintains the same ; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].
 4. That [the plaintiff has been compelled, by reason of the premises. to abandon the said house, and has been unable to rent the same].
- The plaintiff prays judgment, that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows :—[*As in Form No. 81.*]

The plaintiff prays judgment, that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 103.

FOR RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION,
AND FOR AN INJUNCTION.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather, which was executed by an eminent painter], and of which no duplicate exists [*or state any facts showing that the property is of a kind that cannot be replaced by money*].
2. That on the day of 18 , he deposited the same for safe keeping with the defendant.
3. That on the day of 18 , he demanded the same from the defendant, and offered to pay all reasonable charges for the storage of the same.
4. That the defendant refuses to deliver the same to the plaintiff, and threatens to conceal, dispose of, cut, or injure the same if required to deliver it up.

5. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the said [painting].

The plaintiff prays judgment :

- (1) that the defendant be restrained by injunction from disposing of, injuring, or concealing the said [painting] ;
- (2) that he return the same to the plaintiff.

No. 104.

INTERPLEADER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That before the date of the claims hereinafter mentioned, one G. H. deposited with the plaintiff [*describe the property*] for [safe keeping.]
2. That the defendant, C. D., claims the same [under an alleged assignment thereof to him from the said G. H.].
3. That the defendant, E. F., also claims the same [under an order of the said G. H. transferring the same to him].
4. That the plaintiff is ignorant of the respective rights of the defendants.
5. That has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.
6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment :

- (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;
- (2) that they be required to interplead together concerning their claims to the said property ;
- [(3) that some person be authorized to receive the said property pending such litigation ;]
- (4) that upon delivering the same to such [person], the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 105.

ADMINISTRATION BY CREDITOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. E. F., late of _____, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of _____ [*here insert nature of debt and security, if any*].
2. The said E. F. made his will, dated the _____ day of _____, and thereof appointed C. D. executor [*or devised his estate in trust, &c., or died intestate, as the case may be*].
3. The said will was proved by the said C. D. [*or letters of administration were granted, &c*].
4. The defendant has possessed himself of the moveable [and immoveable, or the proceeds of the immoveable] property of the said E. F., and has not paid the plaintiff his said debt
5. The said E. F. died on or about the _____ day of _____.
6. The plaintiff prays that an account may be taken of the moveable [and immoveable] property of the said E. F., deceased, and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEE.

(Title.)

[*Alter Form No. 105 thus :—*]

[*Omit paragraph 1, and commence paragraph 2—*] E. F., late of _____, duly made his last will, dated the _____ day of _____, and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff [*here state the specific legacy*].

For paragraph 4 substitute—

The defendant is in possession of the moveable property of the said *E. F.*, and, amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 6 substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, &c.

No. 107.

ADMINISTRATION BY PECUNIARY LEGATEE.

(Title.)

[Alter Form No. 105 thus :—]

[Omit paragraph 1, and substitute for paragraph 2—] E. F., late of
duly made his last will, dated the day of , and thereof appointed C. D.,
executor, and by such will bequeathed to the plaintiff a legacy of
rupees.

In paragraph 4, substitute "legacy" for "debt."

Another Form.

Between *E. F.* ... and Plaintiff,
 G. H., Defendant.

E. F., the above-named plaintiff, states as follows :—

A. B., of K., in the _____, duly made his last will, dated the [first day of March 1873], whereby he appointed the defendant and M. N. [who died in the testator's lifetime] executors thereof, and bequeathed his property, whether moveable or immovable to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the [first day of July, 1878], and his will was proved by the defendant on the [fourth day of October, 1878]. The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property ; the defendant entered into the receipt of the rents of the immoveable property, and got in the moveable property ; he has sold some part of the immoveable property.

The plaintiff claims—

- (1) to have the moveable and immoveable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken.
- (2) such further or other relief as the nature of the case may require.

Between <i>E. F.</i>	...	...	...	... <i>Plaintiff,</i>
		and		
<i>G. H.</i>	...	...	...	... <i>Defendant.</i>

Written Statement of Defendant.

1 *A. B's* will contained a charge of debts ; he died insolvent ; he was entitled at his death to some immovable property which the defendant sold, and which produced the nett sum of rupees _____, and the testator had some movable property which the defendant got in, and which produced the nett sum of _____ rupees.

2. The defendant applied the whole of the said sums and the sum of rupees which the defendant received from rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the [tenth day of January 1880], and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 108.

EXECUTION OF TRUSTS.

IN THE COURT

, AT

Civil Suit No.

A. B., of

... *Plaintiff*,

C. D., of

against

, the beneficiary [*or one of*

the beneficiaries],

... *Defendant*.

A. B., the above-named plaintiff, states as follows :—

1. That he is one of the trustees under an instrument of settlement, bearing date on or about the day of , made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [*or an instrument of assignment of the estate and effects of E. F. for the benefit of C. D.*, the defendant, and other the creditors of *E. F.*].

2. The said *A. B.* has taken upon himself the burden of the said trust, and is in possession of [*or of the proceeds of*] the moveable and immoveable property conveyed [*or assigned*] by the before-mentioned deed.

3. The said *C. D.* claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, *or of part of the said, immoveable property, or moveable, or the proceeds of the sale of, or of part of, the said moveable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust*]; and he prays that the Court will take the accounts of the said trust and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of the said *C. D.* and such other persons so interested as the Court may direct, or that the said *C. D.* may shew good cause to the contrary.

[*N. B.*—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee.]

No. 109.

FORECLOSURE OR SALE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. By a mortgage-deed, dated the day of 18, a house with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed by the defendant to him, the plaintiff, his heirs [*or executors, administrators*], and assigns, for securing the principal sum of Rs. together with interest thereon at the rate of Rs. per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs. for principal and interest on the said mortgage.

3. The plaintiff prays (*a*) that the Court will order the defendant to pay him the said sum of Rs. , with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed, and the plaintiff placed in possession of the same premises; or (*b*) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest, and costs;

and (c) that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent. per annum until realization; and (d) that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

REDEMPTION.

(Title.)

[Alter Form No. 109 thus :—]

Transpose parties and also the facts in paragraph 1.

For paragraph 2, substitute—

2. There is now due from the plaintiff to the defendant for principal and interest on the said mortgage, the sum of Rs. , which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint, had notice.

For paragraph 3, substitute—

The plaintiff prays that he may redeem the said premises, and that the defendant may be ordered to re-convey the same to him upon payment of the said sum of Rs. and interest, with such costs (if any) as the Court may order, upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

No. 111.

SPECIFIC PERFORMANCE. (No. 1.)

(Title)

A. B., the above-named plaintiff, states as follows :—

1. By an agreement, dated the day of , and signed by the above-named defendant *C. D.*, he the said *C. D.* contracted to buy [or sell to] him certain immoveable property therein described and referred to, for the sum of rupees.

2. He has applied to the said *C. D.* specifically to perform the said agreement on his part, but he has not done so.

3. The said *A. B.* has been and still is ready and willing specifically to perform the agreement on his part, of which the said *C. D.* has had notice.

4. The plaintiff prays that the Court will order the said *C. D.* specifically to perform the said agreement and to do all acts necessary to put the said *A. B.* in full possession of the said property [or to accept a conveyance and possession of the said property], and to pay the costs of the suit.

[*N. B.—In suit for delivery up to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.*]

No. 112.

SPECIFIC PERFORMANCE. (No. 2.)

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant was absolutely entitled to certain immoveable property described in the agreement hereto annexed.

2. That on the same day, the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3. That on the day of 18 , the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4. That on the day of 18 , the plaintiff again demanded such conveyance. [*Or*, That the defendant refused to convey the same to the plaintiff.]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment :

(1) that the defendant execute to the plaintiff a sufficient conveyance of the said property [*following the terms of the agreement*] ;

(2) for rupees compensation for withholding the same.

No. 113.

PARTNERSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. He and the said *C. D.*, the defendant, have been, for the space of years [or months] last past, carrying on business together at , within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively [or under a certain deed sealed and executed by them respectively, or under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [or deed, or agreement].

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership-account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid, out of the partnership-assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles [or deed, or agreement], or that, if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities, and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by , of , pleader for the plaintiff, , [or by].

[*N. B.*—In suits for winding-up of any partnership, omit the prayer for dissolution : but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.]

No. 114.

FORMS OF CONCISE STATEMENTS.

[Code of Civil Procedure, section 58.]

Money lent.	The plaintiff's claim is	rs. for money lent [and interest].
Several demands.	The plaintiff's claim is	rs, whereof rs. is for the price of goods sold, and rs. for money lent, and rs. for interest.
Rent.	The plaintiff's claim is	rs. for arrears of rent.
Salary, &c.	The plaintiff's claim is	rs. for arrears of salary as a clerk [<i>or as the case may be</i>].
Interest.	The plaintiff's claim is	rs. for interest upon money lent.
General average.	The plaintiff's claim is	rs. for a general average contribution.
Freight, &c.	The plaintiff's claim is	rs. for freight and demurrage.

FORMS OF CONCISE STATEMENTS—*continued*.

Banker's balance.	The plaintiff's claim is	rs. for money deposited with the defendant as a banker.
Fees, &c., as pleader.	The plaintiff's claim is	rs. for fees for work done [and money expended] as a pleader.
Commission.	The plaintiff's claim is	rs. for commission earned as [state character—as auctioneer, cotton-broker, &c.].
Medical attendance.	The plaintiff's claim is	rs. for medical attendances.
Return of premium.	The plaintiff's claim is	rs. for a return of premiums paid upon policies of insurance.
Warehouse-rent.	The plaintiff's claim is	rs. for the warehousing of goods.
Carriage of goods.	The plaintiff's claim is	rs. for the carriage of goods by railway.
Use and occupation of house.	The plaintiff's claim is	rs. for the use and occupation of a house.
Hire of goods.	The plaintiff's claim is	rs. for the hire of [furniture].
Work done.	The plaintiff's claim is	rs. for work done as a [surveyor].
Board and lodging.	The plaintiff's claim is	rs. for board and lodging.
Schooling.	The plaintiff's claim is	rs. for the [board, lodging, and] tuition of X. Y.
Money received.	The plaintiff's claim is	rs. for money received by the defendant as pleader [or factor, or collector or, &c.] of the plaintiff.
Fees of office.	The plaintiff's claim is	rs. for fees received by the defendant under colour of the office of .
Money over-paid.	The plaintiff's claim is	rs. for a return of money overcharged for the carriage of goods by railway.
	The plaintiff's claim is	rs. for a return of fees overcharged by the defendant as .
Return of money by stake-holder.	The plaintiff's claim is	rs. for a return of money deposited with the defendant as stake-holder.
Money won from stake-holder.	The plaintiff's claim is	rs. for money entrusted to the defendant as stake-holder, and become payable to plaintiff.
Money entrusted to agent.	The plaintiff's claim is	rs. for a return of money entrusted to the defendant as agent of the plaintiff.
Money obtained by fraud.	The plaintiff's claim is	rs. for a return of money obtained from the plaintiff by fraud.
Money paid by mistake.	The plaintiff's claim is	rs. for a return of money paid to the defendant by mistake.
Money paid for consideration which has failed.	The plaintiff's claim is	rs. for a return of money paid to the defendant for [work to be done, or, work left undone; or, a bill to be taken up, or a bill not taken up, or, &c.].
	The plaintiff's claim is	rs. for a return of money paid as a deposit upon shares to be allotted.
Money paid by surety for defendant.	The plaintiff's claim is	rs. for money paid for the defendant as his surety.
Rent paid.	The plaintiff's claim is	rs. for money paid for rent due by the defendant.
Money paid on accommodation-bill.	The plaintiff's claim is	rs. upon a bill of exchange accepted [or indorsed] for the defendant's accommodation.
Contribution by surety.	The plaintiff's claim is	rs. for a contribution in respect of money paid by the plaintiff as surety.
By co-debtor.	The plaintiff's claim is	rs. for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.

FORMS OF CONCISE STATEMENTS—*continued.*

Money paid for calls.	The plaintiff's claim is	rs. for money paid for calls upon shares against which the defendant was bound to indemnify the plaintiff.
Money payable under award.	The plaintiff's claim is	rs. for money payable under an award.
Life-policy.	The plaintiff's claim is life of <i>X. Y.</i> , deceased.	rs. upon a policy of insurance upon the
Money bond.	The plaintiff's claim is rs. and interest.	rs. upon a bond to secure payment of
Foreign judgment.	The plaintiff's claim is in [the Empire of Russia].	rs. upon a judgment of the Court
Bills of exchange, &c.	The plaintiff's claim is ant.	rs. upon a cheque drawn by the defendant.
	The plaintiff's claim is drawn <i>or</i> indorsed] by the defendant.	rs. upon a bill of exchange accepted [<i>or</i>
	The plaintiff's claim is indorsed] by the defendant.	rs. upon a promissory note made [<i>or</i> in-
	The plaintiff's claim is	rs. against the defendant, <i>A. B.</i> , as acceptor, and against the defendant, <i>C. D.</i> , as drawer [<i>or</i> indorser] of a bill of exchange.
Surety.	The plaintiff's claim is	rs. against the defendant as surety for the price of goods sold.
	The plaintiff's claim is	rs. against the defendant, <i>A. B.</i> , as principal, and against the defendant, <i>C. D.</i> , as surety, for the price of goods sold [<i>or</i> for arrears of rent, <i>or</i> for money lent, <i>or</i> for money received by the defendant, <i>A. B.</i> , as traveller for the plaintiff, <i>or</i> , &c.].
Calls.	The plaintiff's claim is	rs. for calls upon shares.

Indorsement for Costs, &c.

[*Add to the above forms*] and rs. for costs; and if the amount claimed be paid to the plaintiff or his pleader within days [*or, if the summons is to be served out of the jurisdiction, insert the time for appearance limited by the order*] from the service hereof, further proceedings will be stayed.

Damages and other Claims.

Agent, &c.	The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.
	The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and rs. for arrears of wages].
	The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.
	The plaintiff's claim is for damages for breach of duty as factor [<i>or, &c.</i>] of the plaintiff [and rs. for money received as factor, <i>or &c.</i>].
Apprentices.	The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of <i>X. Y.</i> to the defendant [<i>or</i> plaintiff].
Arbitration.	The plaintiff's claim is for damages for non-compliance with the award of <i>X. Y.</i>
Assault, &c.	The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution].
By husband and wife.	The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff, <i>C. D.</i>
Against husband and wife.	The plaintiff's claim is for damages for assault by the defendant, <i>C. D.</i>
Pleader.	The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff.
Bailment.	The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].

FORMS OF CONCISE STATEMENTS—*continued.*

Pledge.	The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].
Hire.	The plaintiff's claim is for damages for negligence in the custody of furniture [or a carriage] lent on hire [and for wrongfully, &c.].
Banker.	The plaintiff's claim is for damages for wrongfully neglecting [or refusing] to pay the plaintiff's cheque.
Bill.	The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.
Bond.	The plaintiff's claim is upon a bond conditioned not to carry on the trade of a
Carrier.	The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.
	The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.
	The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.
	The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.
Charter-party.	The plaintiff's claim is for damages for breach of charter-party of ship [<i>Mary</i>].
Claim for return of goods ; damages.	The plaintiff's claim is for return of household furniture [or &c.], or their value, and for damages for detaining the same.
Damages for depriving of goods.	The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.
Defamation.	The plaintiff's claim is for damages for libel.
	The plaintiff's claim is for damages for slander.
Wrongful distress.	The plaintiff's claim is for damages for improperly distraining.
	[<i>This Form shall be sufficient, whether the distress complained of be wrongful, or excessive, or irregular.</i>]
Ejectment.	The plaintiff's claim is to recover possession of a house, No.
	in Street, or of a farm, called Blackacre, situate in the of
	in the of
To establish title and recover rents.	The plaintiff's claim is to establish his title to [<i>here describe property</i>], and to recover the rents thereof.
	[<i>The two previous Forms may be combined.</i>]
Fishery.	The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.
Fraud.	The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [or a business, or shares, or, &c.].
	The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of <i>A B</i>
Guarantee.	The plaintiff's claim is for damages for breach of a contract of guarantee for <i>A B</i>
	The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.
Insurance.	The plaintiff's claim is for a loss under a policy upon the ship [<i>Royal Charter</i>], and freight of cargo [or for return of premiums].
	[<i>This Form shall be sufficient, whether the loss claimed be total or partial.</i>]
Fire-insurance.	The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture.
	The plaintiff's claim is for damages for breach of a contract to insure a house.
Landlord and tenant.	The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

FORMS OF CONCISE STATEMENTS—*continued*.

Landlord and tenant.	The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.
Medical man.	The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.
Mischievous animal.	The plaintiff's claim is for damages for injury by the defendant's dog.
Negligence.	The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.
	The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.
	The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.
Act XIII. of 1855.	The plaintiff's claim is as executor of <i>A. B.</i> , deceased, for damages for the death of the said <i>A. B.</i> , from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.
Promise of marriage.	The plaintiff's claim is for damages for breach of promise of marriage.
Sale of goods.	The plaintiff's claim is for damages for breach of contract to accept and pay for goods.
	The plaintiff's claim is for damages for non-delivery [<i>or short delivery, or defective quality, or other breach of contract of sale</i>] of cotton [<i>or, &c.</i>].
	The plaintiff's claim is for damages for breach of warranty of a horse.
Sale of lands.	The plaintiff's claim is for damages for breach of a contract to sell [<i>or purchase</i>] land.
	The plaintiff's claim is for damages for breach of a contract to let [<i>or take</i>] a house.
	The plaintiff's claim is for damages for breach of a contract to sell [<i>or purchase</i>] the lease, with good-will, fixtures, and stock-in-trade of a public-house.
	The plaintiff's claim is for damages for breach of covenant for title [<i>or for quiet enjoyment, or, &c.</i>] in a conveyance of land.
Trespass on land.	The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [<i>or cutting his grass, or felling his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river</i>].
Support.	The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [<i>or house, or mine</i>].
Way.	The plaintiff's claim is for damages for wrongfully obstructing a way [<i>public highway or private way</i>].
Water-course, &c.	The plaintiff's claim is for damages for wrongfully diverting [<i>or obstructing, or polluting, or diverting, water from</i>] a water-course.
	The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [<i>or into the plaintiff's mine</i>].
	The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.
Pasture.	The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

[This Form shall be sufficient, whatever the nature of the right to pasture be.]

Light. The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

FORMS OF CONCISE STATEMENTS—*continued*.

Patent.	The plaintiff's claim is for damages for the infringement of the plaintiff's patent.
Copy-right.	The plaintiff's claim is for damages for the infringement of the plaintiff's copy-right.
Trade-mark.	The plaintiff's claim is for damages for wrongfully using [or imitating] the plaintiff's trade-mark.
Work.	The plaintiff's claim is for damages for breach of a contract to build a ship [or to repair a house, &c.].
	The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.
Nuisance.	The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [or, &c.].
	The plaintiff's claim is for damages from nuisance by noise from the defendant's works [or stables, or, &c.].
Injunction.	[Add to indorsement] :—and for an injunction.
	[Add to indorsement where claim is to land, or to establish title, or both] :—
Mesne-profits.	and for mesne-profits.
Arrears of rent.	and for an account of rents or arrears of rent.
Breach of covenant.	and for breach of covenant for [repairs].

1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of *X. Y.*, of , deceased, to have the moveable and immoveable property of the said *X. Y.* administered. The defendant, *C. D.*, is sued as the administrator of the said *X. Y.* [and the defendants, *E. F.* and *G. H.* as his co-heirs-at-law].

2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the day of 18 , of *X. Y.*, deceased, to have the moveable and immoveable property of the said *X. Y.* administered. The defendant, *C. D.*, is sued as the executor of the said *X. Y.* [and the defendants *E. F.* and *G. H.*, as his devisees].

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

4. *By Mortgage.*

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the day of , made between [parties] [or by deposit of title-deeds], and that the mortgage may be enforced by foreclosure or sale.

5. *By Mortgage.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage, dated , and made between [parties], and to redeem the property comprised therein.

6. *Raising Portions.*

The plaintiff's claim is that the sum of rs., which, by a deed of settlement, dated , was provided for the portions of the younger children of , may be raised.

7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture, dated , and made between [parties], carried into execution.

FORMS OF CONCISE STATEMENTS—*continued.*8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed, dated , and made between [*parties*], set aside or rectified.

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement, dated the day of , for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at .

No. 115.

PROBATE.

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claim to be executor of the last will, dated the day of , of C. D., late of , deceased, who died on the day of , and to have the said will established. This summons is issued against you as one of the next-of-kin of the said deceased [*or as the case may be*].

2. *By an executor or legatee of a former will, or a next-of-kin. &c., of the deceased, seeking to obtain the revocation of a probate granted in common form.*

The plaintiff claims to be executor of the last will, dated the day of , of C. D., late of , deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the day of , revoked. This summons is issued against you as the executor of the said pretended will [*or as the case may be*].

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of C. D., late of , deceased, who died on the day of , dated the day of .

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.*

The plaintiff claims to be the brother and sole next-of-kin of C. D., of , deceased, who died on the day of , intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next-of-kin of the deceased [*or as the case may be*].

F.—MISCELLANEOUS.

No. 116.

Section 58 of the Code of Civil Procedure.

Court of the _____ of _____ holden at _____
 REGISTER OF CIVIL SUITS in the year 18 .

PLAINTIFF.		DEPENDANT.	CLAIM.	APPEARANCE.	JUDGEMENT.	APPEAL.	EXECUTION.	RETURN OF EXECUTION.
Name.	Description.	Place of abode.	Amount or value.	When the cause of action accrued.	Day for parties to appear.	Plaintiff.	Defendant.	Date.
			Particulars.			Amount or value.	For whom.	For what, or amount.
						Date of appeal.	Judgment in appeal.	Date of application.
						Date of order.	Against whom.	For what, and amount if money.
						Amount of Costs.	Amount paid into Court.	Arrested.
								Minute of other Return than Payment or Arrest, and date of every Return.
No. of Suit.								
Date of presentation of plaint.								

No. 117.

SUMMONS FOR DISPOSAL OF SUIT.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

dwelling at

WHEREAS has instituted a suit against you for , you are hereby summoned to appear in this Court, in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on , the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff ; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day ; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence ; and you will bring with you, or send by your pleader, , which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court, with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

GIVEN under my hand and the seal of the Court this day of 18 .

[L. S.]

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of .

No. 118.

SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

dwelling at

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court, with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

WHEREAS has instituted a suit against you for , you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions on , the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the issues will be settled in your absence; and you will bring with you, or send by your pleader, , which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18 .

[L. S.]

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of .

No. 119.

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedure.

No. of SUIT.

IN THE COURT OF

AT

Plaintiff.

Defendant.

To

[Name, description, and address.]

WHEREAS [here enter the name, description, and address of the plaintiff] has instituted a suit in this Court against you [here state the particulars of the claim as in the register]: you are hereby summoned to appear in this Court in person on the day of at in the forenoon [if not specially required to appear in person state—"in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"] to answer the above-named plaintiff. [If the summons be for the final disposal of the suit this further direction shall be added here—"and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"]; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you [or send by your agent] [here mention any document the production of which may be required by the plaintiff], which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 .

A. B., of

against

C. D., of

The day of 18 .

WHEREAS it is stated in the plaint that , the defendant in the above suit , is at present residing in , but that the right to sue accrued within the jurisdiction of this Court: it is ordered that a summons returnable on the day of 18 , be forwarded for service on the said defendant, to the Court of , with a duplicate of this proceeding.

[L. S.]

Judge.

No. 121.

TO ACCOMPANY RETURN OF SUMMONS OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 .

The day of

18 .

A. B., of

against

C. D., of

Read proceeding from the , forwarding for service on in Civil No. of that Court.

Read bailiff's endorsement on the back of the process stating that the and proof of the above having been duly taken by me on the [oath or] affirmation of and , it is ordered that the be returned to the with a copy of this proceeding.

[L. S.]

Judge.

NOTE.—*This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.*

No. 122.

DEFENDANT'S STATEMENT.

Sectin 110 of the Code of Civil Procedure.

(Title.)

I, the undersigned defendant [or one of the defendants], disclaim all interest under the will of the said *E. F.*, in the plaint, named [or as heir-at-law, or as next-of-kin, or one of the next-of-kin, of *E. F.*, deceased, in the said plaint named].

Or, I, the undersigned defendant, state that I admit [or deny] [*here repeat in the language of the plaint the statements admitted or denied*].

Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [or that it appears upon the said plaint that I am jointly liable with one *E. F.*, who is not a party to the suit, and not severally liable as by the plaint appears, or that it appears by the said plaint that *G. H.* should have been a joint plaintiff with the said *A. B.* in the said suit, or as the case may be].

Or, that the plaintiff has conveyed his interest in the said mortgage [or right to redeem] to one *I. J.* [or that I have conveyed or assigned to *H. L.*, by way of further charge for securing the sum of Rs. , the right to redeem in the property sought by the suit to be foreclosed].

Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership-trading [or as the case may be].

(Signed) C. D.,
Defendant.

No. 123.

INTERROGATORIES.

Section 121 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 .

A. B.

against

C. D., E. F., and G. H.

Interrogatories on behalf of the above-named *A. B.* [or *C.D.*] for the examination of the above-named [*E.F.* and *G. H.*, or *A. B.*].

1. Did not, &c.

2. Has not, &c.

The defendant *E. F.* is required to answer the interrogatories, numbered.

The defendant *G. H.* is required to answer the interrogatories numbered.

FORM OF NOTICE TO PRODUCE DOCUMENTS.
Section 131 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. 18 .
A. B.
against
C. D.

Take notice that the plaintiff [or defendant] requires you to produce for his inspection the following documents referred to in your plaint [or written statement or affidavit], dated the day of 18 .

Describe documents required.

X. Y., Pleader for the plaintiff [or the defendant].

To Z.,
Pleader for the defendant [or plaintiff].

No. 125.

SUMMONS TO ATTEND AND GIVE EVIDENCE.
Sections 159 and 163 of the Code of Civil Procedure.

WHEREAS your attendance is required to _____ on behalf of the _____ in
the above cause, you are hereby required [personally to appear before this Court]
on the _____ day of _____ 18____, at the hour of _____ A. M. [and] to bring with you
or to send to this Court.

A sum of Rs. _____, being your travelling and other expenses and subsistence-allowance for one day, is herewith sent. If you do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure, section 170.

Notice—(1.) If you are summoned only to produce a document, and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2.) If you are to be detained beyond the day aforesaid, a sum of Rs. _____ will be tendered to you for each day's attendance beyond the day specified.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 126.

Another Form.

No. OF SUIT.

IN THE COURT OF _____ AT _____

Plaintiff.
Defendant.

To
[Name, description, and address.]

You are hereby summoned to appear in this Court in person on the _____ day of _____ at _____ in the forenoon, to give evidence in behalf of the plaintiff [or the defendant] in the above-mentioned suit, and to produce *[here describe with convenient certainty any document the production of which may be required. If the summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly]*, and you are not to depart thence until you have been examined [or have produced the document] and the Court has risen or unless, you have obtained the leave of the Court.

THE FOURTH SCHEDULE.

ii

FORMS OF DECREES.

No. 127.

SIMPLE MONEY-DECREE.

(Title.)

Claim for
This cause coming on for final disposal before in the presence of , on the part of the plaintiff, and on the part of the defendant, it is ordered that the do pay to the , the sum of Rs , with interest thereon at the rate of per cent. per from to the date of realization of the said sum, and do also pay to the the costs of this suit as taxed by the officer of the Court, with interest thereon at the rate aforesaid from the date of taxation to the date of realization.

Costs of Suit.

PLAINTIFF.				DEFENDANT.			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint				Stamp for power			
2. Do. for power				Do. petition;			
3. Do. exhibits				Pleader's fee			
4. Pleader's fees on Rs.				Subsistence for witnesses			
5. Translation-fee				Service of process			
6. Subsistence for witness for attendance				Translation-fee			
7. Commissioner's fee				Commissioner's fee			
8. Service of process							
9. &c.							
TOTAL				TOTAL			

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 128.

DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED TO A LIEN.

(Title.)

It is ordered that it be referred to the Registrar [or Taxing Officer] to take an account of what is due to the plaintiff for principal and interest on the mortgage [or lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar [or Taxing Officer] do declare in Court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs; And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months from the date of declaring in Court the amount so due; it is ordered that the plaintiff do re-convey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under, him, and do deliver

up to the defendant or to such person as he appoints all documents in his custody or power relating thereto, and that upon such re-conveyance being made, and documents being delivered up, the Registrar [or Taxing Officer] shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into Court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [or the premises subject to the said lien] be sold with the approbation of the Registrar [or Taxing Officer]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

No. 129.

FINAL DECREE FOR FORECLOSURE

(Title.)

WHEREAS it appears to the Court that the defendant has not paid into Court the sum _____, which was on the _____ day of _____ last, declared in Court to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the order made in this suit on the _____ day of _____ last, and that the period of six months has elapsed since the said day of _____

It is ordered that the defendant do stand absolutely debarred of all right to redeem the said mortgaged premises.

No. 130.

PRELIMINARY ORDER—ADMINISTRATION-SUIT.

Section 213 of the Code of Civil Procedure.

(Title.)

It is ordered that the following accounts and inquiries be taken and made; that is to say :—

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. An account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

An inquiry be made and account taken of what, of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph the Order will, where necessary, order, in a creditor's suit, inquiry, and accounts for legatees, heirs-at-law, and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

3. An account of the funeral and testamentary expenses.

4. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

6. And it is further ordered, that the defendant do, on or before the _____ day of _____ next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the Registrar, shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

8. And that Mr. *E. F.* be Receiver in the suit [or proceeding], and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the Registrar, [and shall give security by bond for the due performance of his duties to the amount of _____ rupees].

9. And it is further ordered, that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say,—

- (a) an enquiry what immoveable property the deceased was seized of or entitled to at the time of his death ;
- (b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased, or any part thereof ;
- (c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

10. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered that *G. H.* shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered, that for purpose of the inquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the Registrar to give the most useful publicity to such inquiries.

13. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of and that the Registrar do certify the result of the inquiries and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

14. And, lastly, it is ordered that this suit [or matter] stand adjourned for making final decree to the day of .

[Such part only of this order is to be used as is applicable to the particular case.]

No. 131.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

Section 213 of the Code of Civil Procedure.

1. It is ordered that the defendant do on or before the day of pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the state of , the testator, and also the sum of Rs. for interest, at the rate of Rs. per centum per annum, from the day of to the day of amounting together to the sum of Rs. .

2. Let the Registrar [or Taxing Officer] of the said Court tax the costs of the plaintiff and defendant in the suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows :—

(a)—The costs of the plaintiff to Mr. , his attorney [or pleader], and the costs of the defendant to Mr. , his attorney [or pleader].

(b)—And (if any debts are due) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid, let the sums found to be owing to the several creditors mentioned in the schedule to the Registrar's certificate, together with subsequent interest on such of the debts as bear interest, be paid ; and after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should be any residue, let the same be paid to the residuary legatee.

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD
PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

Section 213 of the Code of Civil Procedure.

1. Declare that the defendant is personally liable to pay the legacy of Rs. , bequeathed to the plaintiff ;
2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy ;
3. And it is also ordered, that the defendant do within _____ weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest ;
4. And it is ordered, that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

Section 213 of the Code of Civil Procedure.

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. _____, the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs, when taxed.
2. And it is ordered that the residue of the said sum of Rs. _____, after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows :—
 - (a)—Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, *A. B.*, and *C.*, his wife, in her right, as the sister and one of the next-of-kin of the said *E. F.*, the intestate.
 - (b)—Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin of the said *E. F.*, the intestate.
 - (c)—And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

No. 132.

ORDER—DISSOLUTION OF PARTNERSHIP.

Section 215 of the Code of Civil Procedure.

(Title.)

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the _____ day of _____, and it is ordered that the dissolution thereof as from that day be advertised in the *Gazette &c.*

And it is ordered that _____ be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property, and effects now belonging to the said partnership ;
2. An account of the debts and liabilities of the said partnership ;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the good-will of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken and all the other acts required to be done be completed before the day of , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of .

No. 133.

PARTNERSHIP—FINAL DECREE.

Section 215 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. .
A. B., of
against
C. D., of

It is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows :—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to Rs. .

2. In payment of the costs of all parties in this suit, amounting to Rs. .

[*These costs must be ascertained before the decree is drawn up.*]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. , being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Rs. be paid to the said plaintiff [or defendant] in part-payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

And that the defendant [or plaintiff] do, on or before the day of , pay to the plaintiff [or defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

No. 134.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

Section 224 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .

A. B., of
against
C. D., of

CERTIFIED that no [or partial, as the case may be, and if partial, state to what extent] satisfaction of the decree of this Court, in Civil Suit No. of 18 , a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 135.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

Section 248 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .
 Miscellaneous, No. of 18 .
A. B., of
against
C. D., of

To

WHEREAS has made application to this Court for execution of decree in Civil Suit No. 18, this is to give you notice that you are to appear before this Court on the day of 18, either in person, or by a pleader of this Court, or agent duly authorized and instructed, to show cause, if any, why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 136.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN DEFENDANT'S
 POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

Section 254 of the Code of Civil Procedure.

(Title.)

TO THE BAILLIFF OF THE COURT.

WHEREAS was ordered by decree of this Court, passed on the day of 18, in Suit No. of 18, to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid.

DECREE.			
Principal			
Interest			
Costs			
Costs of decree			
Interest thereon . . .			
Total of attachment .			
TOTAL .			

THESE ARE TO COMMAND YOU to attach the moveable property of the said as set forth in the list hereunto annexed, or which shall be pointed out to you by the said, and unless the said shall pay to you the said sum of Rs., together with Rs., the costs of this attachment, to hold the same until further orders from this Court.

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of 18, with an endorsement certifying the date and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

[L. S.]

Judge.

No. 137.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, &c.

Section 263 of the Code of Civil Procedure.

(Title.)

TO THE BAILIFF OF THE COURT.

WHEREAS , in the occupancy of , has been decreed to the plaintiff in this suit : you are hereby directed to put the said in possession of the same, and you are hereby authorized to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 138.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

Section 268 of the Code of Civil Procedure.

(Title.)

To

WHEREAS has failed to satisfy a decree passed against on the day of 18 , in favour of for Rs : it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from the following property in the possession of the said , that is to say, to which the defendant is entitled, subject to any claim of the said , and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 139.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

Section 268 of the Code of Civil Procedure.

(Title.)

To

WHEREAS has failed to satisfy a decree passed against on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs : it is ordered that the defendant be, and hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, and that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

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No. 140.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &C.

Section 268 of the Code of Civil Procedure.

(Title.)

To

Defendant, and to , Manager of
Company.

WHEREAS has failed to satisfy a decree passed against on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. ; it is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer of shares in the aforesaid Company, namely, , or from receiving payment of any dividends thereof; and you , the Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 141.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 274 of the Code of Civil Procedure.

(Title.)

To

Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. ; it is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

[L. S.]

Judge.

No. 142.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE HANDS OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

Sections 272 and 486 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT
of 18 .A. B., of
against
C. D., ofTo
SIR,

THE plaintiff having applied, under section of the Code of Civil Procedure, for an attachment of certain money now in your hands (here state how the

THE FOURTH SCHEDULE.

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money is supposed to be in the hands of the person addressed, on what account, &c.),
I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

Sir,

Your most obedient servant,

Dated the day of 18 .

[L. S.]

Judge.

No. 143.

ORDER FOR PAYMENT TO THE PLAINTIFF, &C., OF MONEY, &C.,
IN THE HANDS OF A THIRD PARTY.

Section 277 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT AND TO

WHEREAS the following property has been attached in execution of a
decree in Civil Suit, No. of 18 , passed on the day of 18 , in favour
of for Rs. : it is ordered that the property so attached, consisting of
Rs. in money, and Rs. in currency-notes, or a sufficient part thereof
to satisfy the said decree, shall be paid over by you the said to
and that the said property, so far as may be necessary for the satisfaction of the
said decree, shall be sold by you, the bailiff of the Court, by public auction, in the
manner prescribed for sale in execution of decrees, and that the money which may
be realized by such sale, or a sufficient part thereof, to satisfy, the said decree, shall
be paid over to the said , and the remainder, if any, shall be paid to you,
the said .

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 144.

NOTICE TO ATTACHING CREDITOR.

Section 278 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B., of

against

C. D., of

To

WHEREAS has made application to this Court for the removal of attach-
ment on , placed at your instance in execution of the decree in Civil Suit,
No. of 18 , this is to give you notice to appear before this Court on
the day of , 18 , either in person or by a pleader of the Court duly
instructed, to support your claim as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

to you , that is to say , it is ordered that you be, and you are hereby, prohibited from receiving, and you from making payment of, the debt to any person or persons except the said .

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

No. 148.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 .

A. B., of

against

C. D., of

To

and

, Manager of

Company.

WHEREAS has become the purchaser, at a public sale in execution of the decree, in the above suit of certain shares in the above Company, that is to say, of , standing in the name of you , it is ordered that you be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon ; and you , Manager of the said Company, from permitting any such transfer or making any such payment to any person except the said , the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

No 149.

ORDER CONFIRMING SALE OF LAND, &C.

Section 312 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 .

A. B., of

against

C. D., of

WHEREAS the following land [or immoveable property] was, on the day of 18 , sold by the bailiff of this Court in execution of the decree in this suit ; and whereas days have elapsed, and no application has been made [or objection allowed] to the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

[L. S.]
Judge.

THE FOURTH SCHEDULE.

No. 150.

CERTIFICATE OF SALE OF LAND.

Section 316 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18 .

A. B., of

against

C. D., of

THIS is to certify that has been declared the purchaser at a sale by public auction, on the day of 18 . of , in execution of decree in this suit, and that the said sale has been duly confirmed by the Court.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 151.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION.

Section 318 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18 .

A. B., of

against

C. D., of

To THE BAILIFF OF THE COURT.

WHEREAS has become the certified purchaser of at a sale in execution of the decree in Civil Suit, No. of 18 . ; and whereas such land is in the possession of you are hereby ordered to put the said , the certified purchaser, as aforesaid, into possession of the said , and, if need be, to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 152.

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

Section 326 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18 .

A. B., of

against

C. D., of

To

SIR,

Collector of

IN answer to your communication, No. , dated , representing that the sale in execution of the decree in this suit of and, lying within your district, paying revenue to Government, is objectionable, I have the honour to inform you

that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of .

I have the honour to be,

SIR,

Your obedient servant,

[L. S.]

Judge.

No. 153.

ORDER FOR COMMITTAL FOR RESISTING, &C, EXECUTION OF DECREE FOR LAND.

Section 329 of the Code of Civil Procedure.

(Title.)

To

WHEREAS it appears to the Court that has, without just cause, resisted [or obstructed] the execution of the decree of the Court, passed against on the day of 18, in Civil Suit, No. of 18, whereby certain land or immoveable property was adjudged to , it is ordered that the said be committed to custody for a period of days.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 154.

WARRANT OF ARREST IN EXECUTION.

Section 337 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .
Miscellaneous, No. of 18 .

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS was adjudged by a decree of the Court, in No. of 18 , dated 18 , to pay to the plaintiff the sum of Rs. as noted in the margin, and whereas the said sum of Rs. has not been paid to the said plaintiff in satisfaction of the said decree, these are to command you to arrest the said defendant, and, unless the said defendant shall pay to you the said sum of Rs. , together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed.

Principal . . .			
Interest . . .			
Costs . . .			
Execution . . .			
TOTAL . .			

You are further commanded to return this warrant on or before the day of 18 , with an endorsement certifying the day and manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

THE FOURTH SCHEDULE.

No. 155.

NOTICE OF PAYMENT INTO COURT.
 Section 377 of the Code of Civil Procedure.
 IN THE COURT OF 18 .
 B. No.

A. B. v. C. D.¹

TAKE notice that the defendant has paid into Court Rs. , and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim for, &c.].

To Mr. X. Z.,
 the Plaintiff's Pleader
 Z.,
 Defendant's Pleader.

No. 156.

COMMISSION TO EXAMINE ABSENT WITNESSES.
 Section 386 of the Code of Civil Procedure.
 IN THE COURT OF AT .

Civil Suit, No. of 18 .
 A. B., of
 against
 C. D., of

To
 WHEREAS the evidence of is required by the in the above suit ;
 and whereas , you are requested to take the examination on interrogatories
 [or *vis à voce*] of such witnesses , and you are hereby appointed a Commis-
 sioner for that purpose, and you are further requested to make return of such exami-
 nation so soon as it may be taken [process to require the attendance of the witness
 will be issued by this Court on your application].*

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
 Judge.

No. 157.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.
 Sections 392 and 394 of the Code of Civil Procedure.

IN THE COURT OF AT .
 Civil Suit, No. of 18 .
 A. B., of
 against
 C. D., of

To
 WHEREAS it is deemed requisite, for the purposes of this suit, that a commission
 for should be issued ; you are hereby appointed Commissioner for the pur-
 pose of [process to compel the attendance before you of any witnesses, or
 for the production of any documents which you may desire to examine or inspect,
 will be issued by this Court on your application].*

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
 Judge.

* Not necessary where the commission goes to another Court.

No. 158.

WARRANT OF ARREST BEFORE JUDGMENT.

Section 478 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

To THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in the above suit, has proved, to the satisfaction of the Court, that there is probable cause for believing that the defendant is about to , these are to command you to take the said into custody, and to bring before the Court, in order that he may show cause why he should not furnish security to the amount of rupees for personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed against in the suit.

GIVEN under my hand and the seal of the Court, this day of 18 .
[L. S.]
Judge.

No. 159.

ORDER FOR COMMITTAL.

Section 481 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of the defendant to answer any judgment that may be passed against in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which has failed to do; it is ordered that the said defendant be committed to custody until the decision of the suit, or, if judgment be given against , until the execution of the decree.

GIVEN under my hand and the seal of the Court, this day of 18 .
[L. S.]
Judge.

No. 160.

ATTACHMENT BEFORE JUDGMENT WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

To THE BAILIFF OF THE COURT.

WHEREAS has proved, to the satisfaction of the Court, that the defendant in the above suit , these are to command you to call upon the said defend-

ant , on or before the day of , either to furnish security for the sum of rupees to produce and place at the disposal of this Court, when required , or the value thereof, or such portion of the value as may be sufficient to fulfil any decree that may be passed against , or to appear and show cause why should not furnish security ; and you are further ordered to attach the said , and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 161.

ATTACHMENT BEFORE JUDGMENT ON PROOF OF FAILURE TO FURNISH SECURITY.

Section 485 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the defendant, to furnish security to fulfil any decree that may be passed against in the suit, and whereas the Court has called upon the said to furnish such security, which has failed to do ; these are to command you to attach , the property of the said , and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to this Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 162.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED, SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSONS TO THE IMMEDIATE POSSESSION THEREOF.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .

A. B., of

against

C. D., of

To

Defendant.

It is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from receiving from the following property in the possession of the said , that is to say,

to which the defendant is entitled, subject to any claim of the said , and the said , is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

No. 163.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

To Defendant.

It is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .
Schedule.

[L. S.]
Judge.

No. 164.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS OF OTHER PERSONS, OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 486 of the Code of Civil Procedure.

IN THE COURT AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

To

It is ordered that the defendant be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from the [money now in hands belonging to the said defendant, or debts as the case may be, describing them], and that the said be, and hereby prohibited and restrained, until the further order of this Court, from making payment of the said [money, &c.], or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

that part of the said book which is entitled _____, and _____ also that part which is entitled _____ [or which is contained in page _____ to page _____ both inclusive], until the _____, &c.

[In Patent cases] to restrain the defendant, *C. D.*, his agents, servants, and workmen, from making or vending any perforated bricks [or as the case may be] upon the principle of the inventions in the plaintiff's plaint [or petition, &c., or written statement, &c.] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [or as the case may be] mentioned, and from counterfeiting, imitating, or resembling the same inventions, or either of them, or making any addition thereto, or substruction therefrom, until the hearing, &c.

[In cases of trade-marks] to restrain the defendant, *C. D.*, his servants, agents, or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff, *A. B.*, in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, &c.,] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff, *A. B.*, and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff, *A. B.*, until the, &c.

[To restrain a Partner from, in any way, interfering in the business] to restrain the defendant, *C. D.*, his agents and servants, from entering into any contract, and from accepting, drawing, endorsing, or negotiating any bill of exchange, note, or written security, in the name of the partnership-firm of *B. & D.*, and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of *B. & D.*, or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, or promise, or undertaking, until the, &c.

No. 167.

NOTICE OF APPLICATION FOR INJUNCTION.
Section 494 of the Code of Civil Procedure.

IN THE COURT OF

AT

A. B., of

against

C. D., of

TAKE notice that I, *A. B.*, intend to apply, at the sitting of the Court at aforesaid, on the _____ day of _____, for an injunction to restrain *C. D.* from further prosecuting a suit which he has commenced against me in _____, to recover damages for the breach of the contract for the specific performance of which this suit was commenced [or to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, or from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, or as the case may be].

Dated this _____ day of _____ 18 ____.

To *C. D.*

A. B.

[*N. B.*—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceeding already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.]

No. 168.

APPOINTMENT OF A RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 18 , in favour of : you are hereby [subject to your giving security to the satisfaction of the *Registrar*] appointed Receiver of the said property under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on . You will be entitled to remuneration at the rate of per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 169.

BOND TO BE GIVEN BY RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit No. of 18 .

A. B., of
against
C. D., of

KNOW all men by these presents, that we, *I. J.*, of, &c., and *K. L.*, of, &c., and *M. N.* of &c, are jointly and severally bound to *G. H.*, *Registrar* of the Court of , in Rs. , to be paid to the said *G. H.*, or his attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors, and administrators jointly and severally by these present.

Dated this day of 18 .

And whereas a plaint has been filed in this Court by *A. B.* against *C. D.* for the purpose of [*here insert object of suit*] ;

And whereas the said *I. J.* has been appointed by order of the above-mentioned Court, to receive the rents and profits of the immoveable property, and to get in the outstanding moveable property of *O. P.*, the testator in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden *I. J.* shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property of the said *O. P.* [*or as may be*] at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

I. J.
K. L.
M. N.

Signed and delivered by the above-bounden in the presence of

NOTE.—If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.

No. 170.

ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.

Section 508 of the Code of Civil Procedure.

(Title.)

To

WHEREAS the above-mentioned plaintiff and defendant have agreed to refer the matters in difference between them in the above suit to your arbitration and award, you are hereby appointed accordingly to determine all the said matters in difference between the parties, and with power, by consent of the parties to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the day of 18 , or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. , being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 171.

ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT.

Section 508 of the Code of Civil Procedure.

(Title.)

UPON reading a petition of the plaintiff, filed this day, and on the consent of for the defendant, and upon hearing for the plaintiff, and for the defendant, it is ordered, by and with the consent of all the parties, that all matters in difference in this suit, including all dealings and transactions between all parties, be referred to the final determination of , who is to make his award in writing, and submit the same to this Court, together with all proceedings, depositions, and exhibits in this suit, within one month from the date hereof. And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to examine the parties and their witnesses upon oath or affirmation, which he is empowered to administer, and that the said arbitrators shall have all such powers or authorities as are vested in arbitrators under the Code of Civil Procedure, including therein power to call for all books of accounts that he may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit, together with the costs of reference to arbitration, up to and including the award of the said arbitrator, and the enforcement thereof, do abide the result of the finding of the said arbitrator. And it is further ordered, by and with the like consent, that the said arbitrator be at liberty to appoint a competent accountant to assist him in the investigation of the several matters referred to him as aforesaid, and that the remuneration of such accountant and other charges attending thereto be in the discretion of the said arbitrator.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 172.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

Section 532 of the Code of Civil procedure.

No. of SUIT.

IN THE COURT OF

AT

Plaintiff.
Defendant.To [*Here enter the defendant's name, description, and address.*]

WHEREAS [*here enter the plaintiff's name, description, and address*] has instituted a suit in this Court against you under Chapter XXXIX. of the Code of Civil Procedure for Rs. principal and interest [*or* Rs. balance of principal and interest], due to him as the payee [*or* indorsee] of a bill of exchange [*or* hundi, *or* promissory note], of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause as appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. [*here state the sum claimed*] and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court, supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[*Here copy the bill of exchange, hundi, or promissory note, and all endorsements upon it.*]

No. 173.

MEMORANDUM OF APPEAL.

Section 541 of the Code of Civil Procedure.

MEMORANDUM OF APPEAL.

(Name, &c., as in Register.) Plaintiff—Appellant.

(Name, &c., as in Register.) Defendant—Respondent.

[Name of Appellant] plaintiff or defendant] above-named appeals to the High Court at [*or* District Court at , as the case may be] against the decree of in the above suit, dated the day of , for the following reasons, namely [*here state the grounds of objection*].

No. 174.

REGISTER OF APPEALS.

Section 548 of the Code of Civil Procedure.

COURT (OR HIGH COURT) AT

REGISTER OF APPEALS FROM DECREES IN THE YEAR 18 .

APPELLANT.		RESPONDENT.			DECREE APPEALED FROM.						APPEARANCE.		JUDGMENT.		
Name.	Description.	Place of Abode.	Name.	Description.	Place of Abode.	Of what Court.	No. of Original Suit.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed, or altered.	For what, or Amount.
No. of Appeal.															
Date of Memorandum.															

No. 175.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.

Section 553 of the Code of Civil Procedure.

IN THE COURT OF AT .

, *Appellant*, v. , *Respondent*.

18 . APPEAL from the of the Court of , dated the day of

To *Respondent*.

TAKE notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that the day of 18 , has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided *ex parte* in your absence.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

[NOTE —If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

No. 176.

DECREE ON APPEAL.

Section 579 of the Code of Civil Procedure.

IN THE COURT OF AT .

, *Appellant*, v. , *Respondent*.

18 . APPEAL from the of the Court of , dated the day of

Memorandum of Appeal.

, *Plaintiff*., *Defendant*.

Plaintiff [*or defendant*] above-named appeals to the Court at against the decree of in the above suit, dated the day of 18 , for the following reasons, namely :

[*here state the reasons*]

This appeal coming on for hearing on the day of 18 , before , in the presence of for the appellant, and of for the respondent, it is ordered—

[*here state the relief granted*]

The costs of this appeal, amounting to , are to be paid by .
The costs of the original suit are to be paid by .

GIVEN under my hand this day of 18 .

[L. S.]

Judge.

No. 177.

REGISTER OF APPEALS FROM APPELLATE DECREES.

Section 587 of the Code of Civil Procedure.

HIGH COURT AT

REGISTER OF APPEALS FROM APPELLATE DECREES.

[illegible]

No. 178.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

Section 626 of the Code of Civil Procedure.

IN THE COURT OF

AT

, Plaintiff, v.

, Defendant.

To

TAKE notice that has applied to this Court for a review of its judgment passed on the day of 18 in the above case. The day of 18 is fixed for you to show cause why the Court should not grant a review of its judgment in this case.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 179.

NOTICE OF CHANGE OF PLEADER.

IN THE COURT OF

AT

A. B., of

against

C. D., of

TO THE REGISTRAR OF THE COURT.

TAKE notice that I, A. B [or C. D.], have hitherto employed as my pleader G. H., of , in the above-mentioned cause, but that I have ceased to employ him, and that my present pleader is J. K., of

A. B. [or C. D.]

No. 180.

MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE, OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.

HOURS of attendance at the office of the Registrar [place of office] from ten till four, except on [here insert the day on which the office will be closed], when the office will be closed at one.

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